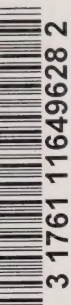


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Critique Royal commission inquiry into labour disputes
Hearings

v 29

April, 1967



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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

315

HEARINGS HELD AT
TORONTO

VOL. NO.

DATE

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April 27, 1957

Official Reporters

NETHERCUT & YOUNG LIMITED
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IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch. 323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE: The Honourable Ivan C. Rand,
Commissioner, at 123 Edward
Street, Toronto, Ontario,
on Thursday, April 27th,
1967.

E. Marshall Pollock Counsel to the Commission

APPEARANCE:

Mr. G.A. Becigneul,)	The Toronto
Director of Industrial)	
Relations)	Construction
)	
)	Association
Mr. B.W. Binning,)	
Counsel)	

Nethercut & Young Limited, Official Reporters,
48 York Street, Toronto, Ontario. Per:
F.J. Nethercut,

*Nethercut & Young**Toronto, Ontario*

Toronto, Ontario

Thursday, April 27, 1967

---On commencing at 10:00 a.m.

MR. POLLOCK: The Toronto Construction Association, G.A. Becigneul, Director of Industrial Relations and B.W. Binning, Counsel.

Gentlemen, we have had a brief opportunity to read your brief and our proceedings here are extremely informal. I want you to proceed in the presentation of the brief in the manner you think would best suit the interests of the Commissioner and yourself, bearing in mind that we have had only an opportunity to look at it rather cursorily. We can stop you and ask some questions and perhaps we can get into some kind of discussion on the problems that are raised.

MR. BINNING: As noted, we would appreciate an informal approach to it because the O.F.C.A. was supposed to make our formal presentations. When the inquiry was first announced, we thought that we would have many, many recommendations to make and we started thinking about the problem from the outset, as soon as it was announced and when we attempted to analyse the problem as we saw it, we came to the conclusion that really we don't have many recommendations to make; in fact, we might not have any at all. But what we

1 did try to do - and this is reflected in our
2 letter - was to attempt to clarify our own
3 thinking, to see if we could isolate certain
4 problem areas from our point of view. Basically,
5 that letter is designed to give you our
6 thinking.

7 The Association has probably
8 been involved in labour realtions longer than
9 most. It first started to bargain about 70
10 years ago with various trades in the Toronto
11 area, which is a long time for collective
12 bargaining. Mr. Becigneul and myself have
13 been working closely together during the past
14 three years with the unions here. Mr. Becigneul
15 is the Director of Industrial Relations for
16 the Association. Prior to that he was
17 Secretary-Treasurer of Anglin-Norcross, one
18 of the larger contractors here - they built
19 the new City Hall - and he has been negotiating
20 since 1954.

21 In 1965 we had a fairly lengthy
22 strike of 8 weeks here in Toronto. It would
23 appear from the morning papers that we are
24 facing another strike and we are presently
25 in negotiations. We wish we had had more
26 time to prepare for this morning but we have
27 been tied up considerably in meetings and
28 that type of thing.

29 As we thought about it over the
30 past few months and in preparation, we feel that

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1 if there is anybody probably who should have
2 a complaint in the industry, it is probably
3 the individual craftsman more than ourselves
4 as an association, or our members as employers,
5 and more than the unions. In our opinion as
6 we have analysed it, probably the unions are
7 the strongest party in the construction industry,
8 employers are second and I think the individual
9 craftsman is the last man on the totem pole.
10 We have attempted to analyse it but as we see
11 it, the union in the construction industry
12 does more than represent employees; they actually
13 control the supply of employees in the industry
14 and, more than that, they actually not only
15 control the supply but also control the employees
16 themselves. To give you an example, we have
17 one contract in the city that provides that
18 where a contractor is using employees, members
19 of a certain union, say on this side of the
20 street on a project, and he also has a project
21 on the other side of the street, he is only
22 permitted to move 50 per cent of the crew from
23 this side of the street to the other side. Now,
24 if he wishes to move from this job across the
25 street to the other job, he must lay off 50
26 per cent, go to the union and hire that 50 per
27 cent he had laid off to go to the job across
28 the street. The unions in the construction
29 industry have the power to remove an employee
30 from a particular job and the employer, really,

1 has no right or method to stop the removal of
2 such an employee.

3 MR. POLLOCK: What is the reason
4 they ascribe to that?

5 MR. BINNING: I think it has
6 probably grown up during the years. An
7 employer might, say, in carpenters, to take
8 an example, hire, say, 10 per cent of the
9 number of carpenters he uses in one year, ^{which} he
10 will employ throughout the year. The remaining
11 90 per cent, he will hire as he has work to do;
12 in other words, a project might require 90
13 carpenters for 3 months but then he will lay
14 them off because they can no longer be used
15 on that project. It is really perhaps one
16 of the peculiar characteristics of the industry.
17 The demand for labour fluctuates with the
18 jobs that you have and probably this is one
19 of the main reasons why this is happening.

20 MR. POLLOCK: As far as the
21 union is concerned, when they require that
22 you lay off 50 per cent if you are transferring
23 from one side of the street to the other, they
24 would then provide the contractor with the
25 remaining 50 per cent from the hall?

26 MR. BINNING: Correct.

27 MR. POLLOCK: Do they maintain
28 any kind of a seniority schedule at the hall?

29 MR. BINNING: I don't know what
30 their procedure is. I would think not, but I

1 would only be guessing. My guess would be
2 that it is probably on the basis, I would hope,
3 that the one who has been off work the longest
4 will get the next job.

5 MR. POLLOCK: That is probably
6 the reason why they take these 50 per cent that
7 have been working up to that time and put them
8 at the bottom of the list and let the other
9 fellows circulate, to circulate the employment.

10 MR. BINNING: That is correct.
11 But, you see, the problem here - and once again
12 I come back to this problem that the person
13 who should be here, rather than perhaps
14 ourselves, is the craftsman - it means that
15 a poor craftsman and a good one, will probably
16 achieve the same level of employment.

17 THE COMMISSIONER: Working
18 together?

19 MR. BINNING: Right.

20 MR. POLLOCK: With the exception
21 that if the chap is an extremely good craftsman,
22 he will probably be the one included in the
23 50 per cent that stays.

24 MR. BINNING: That is right, and
25 be included in the 10 per cent in most cases
26 but this doesn't always apply.

27 THE COMMISSIONER: How does that
28 injure you? From the point of view of the
29 individual, it is really enabling them all to
30 get more or less an equality of opportunity.

1 MR. BINNING: It injures us in
2 this respect, that this particular contract
3 involves bricklayers - I am just taking that
4 as an example - and they work in crews. They
5 go along a wall and the timing is such that
6 we complete the work at the same time so you
7 are moving at a pace that a crew takes a while
8 to develop.

9 THE COMMISSIONER: That is a
10 matter of time, there, but aren't these men
11 accustomed to working with different people?
12 They must be, from job-to-job and day-to-day.
13 They are all more or less skilled; they are
14 skilled, of course. Can't they fit in very
15 easily?

16 MR. BINNING: I don't think
17 they fit in easily and I also think there is
18 a problem of supervision. They get used to
19 a certain type of supervision and then you have
20 to release them and you are dealing with a
21 lot of new men whom you don't know. It keeps
22 going around. It is costly in that respect.
23 I am not really complaining about that.

24 THE COMMISSIONER: No, I understand
25 that.

26 MR. BINNING: I am just indicating
27 the type of problem that we face.

28 THE COMMISSIONER: I was just
29 wondering from the point of view of the men
30 themselves, it enables a distribution of work.

1 MR. BINNING: It is probably
2 equitable from their point of view, I am not
3 disputing that at all. But what I am really
4 trying to show with this is the type of control
5 the union has over an employee. You would
6 not run into this in an industrial situation
7 where the employer has a great deal of control
8 despite collective agreements, over his employees.

9 THE COMMISSIONER: Would you
10 say with the industrial employee you speak
11 of, would you say there is more security than
12 in the case of a construction employee?

13 MR. BINNING: That is right.

14 MR. POLLOCK: That doesn't
15 always hold as far as an industrial situation
16 is concerned. There is a lay-off and a recall
17 and it is all pretty well stipulated usually
18 in the collective agreement, the order of
19 lay-off and the order of recall.

20 MR. BINNING: Not really, because
21 I have a fair amount of experience in the
22 industrial field and with the exception of
23 some of the larger companies with a long
24 history of collective bargaining, you usually
25 have in your seniority clause, a skill and
26 ability proviso which means that seniority
27 will only govern provided that skill and ability
28 are comparatively equal, but that is not
29 applied in this sense.

30 MR. POLLOCK: But if you lay

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1 off - Ford Motor Company lays off part of their
2 production unit because of a cut-back in
3 production, they can't decide who is going
4 to come back and say, "I want you to come back
5 and you to come back".

6 MR. BINNING: I don't know what
7 their collective agreement says, but they may
8 well have that power to select the best men.
9 Many, many agreements give the company the
10 power to retain those who have the most
11 skill and ability regardless of seniority.

12 THE COMMISSIONER: Actually
13 that may be a provision.

14 MR. BINNING: Oh, it is; not
15 "maybe." I just negotiated a contract yesterday
16 and it is.

17 THE COMMISSIONER: It is one
18 that will be acknowledged to be a bargaining
19 item?

20 MR. BINNING: Correct, and it
21 is very common.

22 THE COMMISSIONER: Is it really?

23 MR. BINNING: Yes.

24 MR. POLLOCK: You have got that
25 in the construction industry too, I suppose,
26 certainly the 10 per cent and the 50 per cent?

27 MR. BINNING: Right, but there
28 are no seniority provisions in the construction
29 industry.

30 MR. POLLOCK: There are no

1 continuing employer-employee relationships outside
2 of that small 10 per cent that is carried on.

3 MR. BINNING: That is true.

4 MR. POLLOCK: The union acts
5 as the labour broker and gives you the bodies
6 as you need them?

7 MR. BINNING: This is correct.

8 THE COMMISSIONER: And there
9 would be no seniority in that 10 per cent.

10 MR. BINNING: No. I have not
11 seen a construction contract, and I have seen
12 quite a few, with any seniority provisions
13 at all.

14 Now, that is part of the problem.
15 The other background is you ask why this
16 developed. I think I can speak probably better
17 for the construction industry but the skills
18 involved on a job site have been reduced
19 considerably through the years. Now, for example,
20 door frames and this type of thing are pre-made
21 in factories and the installation of a door
22 now, under the present system, requires much
23 less skill than it did formerly. This leads
24 us into another area which is a real problem
25 to us and that is jurisdictional disputes. As
26 we indicated in our letter to you, this could
27 become the most serious problem in the
28 construction industry. It is not right now,
29 we do have considerable problems, I am sure you
30 have heard about the Toronto-Dominion dispute.

1 Our firm acted on that.

2 THE COMMISSIONER: What was that?
3 Just indicate it. I don't recall it by that
4 name.

5 MR. BINNING: The Toronto-
6 Dominion dispute?

7 MR. BECIGNEUL: The sheet metal
8 workers, they walked off in concert, 54 of
9 them were off 7 weeks. They were claiming
10 the work the carpenters were doing.

11 MR. BINNING: It would appear,
12 certainly if we are going to open the northland
13 of Canada we are going to have to control the
14 environment in which we build the structures
15 we put in there.

16 THE COMMISSIONER: They are
17 building houses, I see now, for Eskimos.

18 MR. BINNING: That is right,
19 that type of thing. Your erection season, let
20 me call it the erection season, is so short
21 that you couldn't go through the Toronto method
22 of constructing it from the bottom up; you
23 have to pretty well construct everything in
24 factories and ship them up there and then just
25 install them bing-bang and have a building
26 in a matter of days rather than in a matter
27 of months.

28 Now, probably the one area
29 in Toronto where jurisdictional disputes right
30 now is the greatest problem, is in the pre-stressed

1 concrete or precast concrete industry. For
2 example, the best example is the City Hall. The
3 outer shell of the City Hall is all precast; in
4 other words, that was poured in Scarborough in
5 a factory, those big slabs; they were brought
6 down by truck and merely erected. Well, formerly,
7 of course, that would have been done by building
8 forms, the carpenters would build the forms
9 and the rod people put in rod et cetera, et cetera.
10 The people installing those forms in the building
11 are all members of the labourers union. Now,
12 the labourers union you could call only unskilled
13 but these people are very skilled. They negotiated
14 with the labourers union and they become very
15 skilled people in handling these precast forms.
16 There are presently three or four unions claiming
17 this work. We only deal with six so that is
18 better than two-thirds of the basic skills
19 which are claiming this work in total or parts of
20 it.

21 THE COMMISSIONER: On that you
22 may be able to make some suggestions, how to
23 settle that.

24 MR. BINNING: We have an easy
25 suggestion but perhaps it is too easy. We will
26 probably get to that, but I am just trying to
27 give you a little bit of the background.

28 That is one other problem. The
29 remaining background - and then I will get into
30 what we might discuss - the association represents

1 about 80 general contractors in the City of
2 Toronto. Now those 80 only do about 50 per
3 cent of all of the commercial and industrial
4 work in the city.

5 THE COMMISSIONER: You don't
6 go into residential?

7 MR. BINNING: No, it is too
8 small to even worry about. They normally
9 incorporate other companies to do residential.

10 MR. BECIGNEUL: I don't think
11 I would say it was small because I think,
12 actually, residential might be as close to in
13 value, residential apartments, I imagine, the
14 value would be almost as great as industrial.
15 I think it would run to \$400 million to \$500
16 million annually here in Toronto.

17 MR. POLLOCK: But it is smaller
18 units of construction.

19 MR. BINNING: Right, with the
20 exception that Sutton Place behind you out
21 the window there, that would be residential.
22 That was started more or less as a non-union
23 job so you are talking about a fairly sizeable
24 structure. But when I am speaking 50 per cent
25 you are talking about commercial and industrial.
26 Most commercial and industrial, in the City
27 of Toronto, with the exception of small factories
28 on the fringe are constructed under fully
29 union situations; in other words, all of the
30 employees on the site are members of trade unions.

1 THE COMMISSIONER: And of the
2 necessary trade unions.

3 MR. BINNING: The necessary
4 trade unions. So this Association only
5 represents 50 per cent of the employers. However,
6 the terms and conditions of employment on that
7 job site, as far as these six basic trades are
8 concerned, this Association negotiates the
9 terms and conditions for 100 per cent of
10 those employees. So, when we sit down at
11 the bargaining table, we set the terms and
12 conditions for the whole industry but we only
13 have behind us, supporting us, 50 per cent.
14 Now, this leads to a very serious problem for
15 us and this is what is a little bit ironical
16 about appearing here.

17 THE COMMISSIONER: You can
18 bind them by your terms.

19 MR. BINNING: Yes, but as I
20 understood one of the reasons for the establishment
21 of this Inquiry - and I am just giving you
22 background - was that labour said "If you permit
23 an employer to work during a legal strike, you
24 are disturbing the balance for proper collective
25 bargaining. That is what I understood their
26 argument was and by permitting injunctions
27 you are effectively stopping the type of
28 picketing that would stop people going into
29 work. Basically they are saying this.

30 MR. POLLOCK: Right.

1 MR. BINNING: Now, in our
2 situation, we went through an eight week strike
3 in 1965 and our claim is the exact same as
4 the union's. All of the employees who were
5 on strike, whom we formerly employed, were
6 working for other employers and our employer's
7 projects were completely stopped: We were
8 idle.

9 THE COMMISSIONER: That is the
10 converse.

11 MR. BINNING: That is the
12 converse.

13 MR. POLLOCK: That also happens
14 in Hamilton, London, Sarnia and everywhere
15 else where you have large companies.

16 MR. BINNING: Right. And this
17 is where it is distinct from an industrial
18 situation. We find ourselves/ the exact
19 converse situation and this is a real problem
20 to us.

21 MR. POLLOCK: Do you ever
22 picket those job sites?

23 MR. BINNING: We are thinking
24 of that this year but this is about the closest
25 we come to asking you to make recommendations
26 and we are not too sure we want you to make
27 recommendations in this respect either. This
28 year should teach us a little more about our
29 problems. The trouble was in 1965 there
30 was a tremendous shortage of skilled workers,

1 skilled probably, and unskilled as well, on
2 the construction site and as a result, even
3 before the strike our employers needed more
4 men. So it was natural that when more men
5 were created by reason of striking our jobs,
6 there was ample opportunity for them to work.
7 Now, this year, where we are facing another
8 strike, there is unemployment right now so
9 the strike, if the union seek to strike us
10 then it will create more unemployment. So,
11 perhaps our situation will be all right in
12 this respect. Maybe we can come back to
13 you or you can look at the situation as it
14 develops over the next couple of months.

15 MR. POLLOCK: I suppose that
16 the demand is having some effect on the
17 supply of labour.

18 MR. BINNING: That is correct
19 but even here in Toronto the construction
20 prospects are not nearly as good as they were
21 in 1965 when we faced a lengthy strike.

22 MR. POLLOCK: Are these other
23 contracts who don't belong to your Association,
24 capable of characterization into a group?
25 Are they generally companies from out of the
26 province or very small companies or very large
27 companies or are they all kinds?

28 MR. BINNING: In Toronto we are
29 not bothered by the international contractors.
30 As I understand it the international contractors

1 are usually specialists. For example, we have
2 referred to the Texas Gulf sulphur situation
3 up north. I think they were experts, I think
4 it is fair to say, in this type of stripping
5 for purposes of mining. YOU have others
6 who were expert, say, in foundries and this
7 type of thing. But in Toronto the construction
8 of buildings, no experts are required in
9 this field, I mean international experts
10 like oil people or mining experts so we haven't
11 been bothered. We haven't bothered, really
12 with the bigger companies, Pigott Construction
13 Company who were the contractors on the
14 Toronto-Dominion Bank.

15 THE COMMISSIONER: Where is it
16 centred?

17 MR. BINNING: Right here in
18 Toronto.

19 THE COMMISSIONER: It is not
20 international? It doesn't belong to your
21 Association?

22 MR. BINNING: No, they did
23 some years ago but they pulled out.

24 MR. POLLOCK: Another outfit
25 that doesn't belong to your Association is
26 Hydro?

27 MR. FEECIGNEUL: They are
28 members of our union.

29 MR. BINNING: Of our Association.
30 They are not members of the general contracting

1 section. The general contracting section is
2 the one that does the marketing. They are
3 not a general contractor but they do hire all
4 these trades and they are members of the
5 Association.

6 MR. POLLOCK: I think on May
7 1st, they are not going to be any competition
8 either, they are having some difficulties.

9 MR. BINNING: Well, I hope
10 that everybody has to eat by candle-light and
11 cook by wood fire and perhaps some sanity might
12 be brought to these situations. I am hopeful
13 there.

14 There are also a lot of other
15 large contracts like C.A. Pitt - we have named
16 a few. You also have another group who are
17 not really in the construction field but who
18 do use many craftsmen in this field. You have
19 all the school boards. They do repair work
20 and this type of thing, you have ---

21 MR. POLLOCK: They would not
22 be a significant factor, would they? Repair
23 and maintenance and that type of thing?

24 MR. BINNING: They are
25 significant. We can check, we know how many
26 hours they work from the welfare statements
27 that we receive. They have to make payments
28 on the welfare and Mr. Becigneul is one of
29 the trustees in all the welfare funds so we
30 can trace who is working during a strike and

1 they are significant. The Canadian National
2 Exhibition is another one.

3 THE COMMISSIONER: Then you don't
4 have much trouble in tracing the re-employment
5 of strikers who have been reappointed in some
6 other work?

7 MR. BINNING: We have some
8 problem tracing the re-employment of the
9 strikers but we have no problem in knowing
10 who continues to work and who do not. In
11 a general sense we do, that is true.

12 MR. POLLOCK: You know what
13 company is working and you know the number of
14 people who probably will be working there.

15 MR. BINNING: Provided they
16 are making their welfare payments, and we
17 assume they do make their welfare payments,
18 but, as I say, during that eight week strike
19 most of the crafts people were hired by people
20 like this and they were large employers of
21 these people.

22 THE COMMISSIONER: Just what
23 is the welfare provision you speak of? I am
24 not familiar with it.

25 MR. BINNING: In each agreement
26 there is a five or ten cent an hour provision
27 saying that each hour worked five or ten cents
28 shall be paid on account of welfare, into a
29 welfare fund.

30 THE COMMISSIONER: Is that

1 peculiar to Toronto?

2 MR. BINNING: No, I think it is
3 fairly general.

4 THE COMMISSIONER: In addition
5 do you have this five cents an hour for promotion
6 of industry?

7 MR. BINNING: No.

8 MR. BECIGNEUL: I think that
9 word "welfare", though, is really an incorrect
10 word. I think really, it is medicare, medical
11 benefits to the man and his family, the children
12 or if the wife has a baby.

13 MR. BINNING: Health and welfare
14 maybe is the phrase we should be using.

15 THE COMMISSIONER: And they
16 give the names of those who are recipients,
17 I suppose.

18 MR. BINNING: They give a list
19 of the employees and the amount of contribution.
20 Actually, the employee doesn't contribute, it
21 is not a check-off: It is the employer.

22 THE COMMISSIONER: In relation
23 to an individual.

24 MR. BINNING: Correct. He makes
25 a payment.

26 MR. POLLOCK: If he has 100
27 employees it would only show 100 times whatever
28 the hourly rate was?

29 MR. BECIGNEUL: The names must
30 be listed, sir.

1 MR. BINNING: But on the forms
2 we get it only shows the total amounts. These
3 are the only amounts we look at.

4 MR. BECIGNEUL: I think we should
5 mention in that welfare or medical, there are
6 about four sections, we have a medical scheme,
7 we have a supplementary unemployment insurance
8 benefit in some of them, then we have group
9 insurance and we have medical. There are
10 actually about four different types of this.

11 MR. POLLOCK: So all these other
12 contractors who are not members of the Association,
13 they have a relationship with the union saying,
14 "We will pay the rates that are negotiated by
15 the Association."

16 MR. BINNING: Right. I was
17 going to go into that.

18 MR. POLLOCK: I am sorry.

19 MR. BINNING: You are right.
20 The situation is that when we get into a
21 strike situation and the union does strike us,
22 then they strike all of our employers. Prior
23 to striking - this has been going on right
24 now - we are facing a strike now, the time
25 has not run out under the Labour Relations Act,
26 but it will shortly and they have started last
27 week to go around to various people and say,
28 "Would you use X number of employees more, come
29 May the 15th?".

30 THE COMMISSIONER: They do that

1 in advance?

2 MR. BINNING: In preparation for.

3 THE COMMISSIONER: The union does?

4 MR. BECIGNEUL: Pre-planning.

5 MR. BINNING: We are not
6 criticizing that, we would do the same thing
7 if we were in their shoes.

8 MR. POLLOCK: You have written
9 your letters, I think, already to these people.

10 MR. BINNING: You have read the
11 paper this morning.

12 MR. POLLOCK: Yes.

13 MR. BINNING: We are facing
14 this right now where they are trying to create
15 employment in case they go on strike. Now,
16 last time they were successful in placing most
17 of their men so, as a result, we are sitting
18 at the bargaining table, there is no pressure
19 on the union to get back to negotiation.

20 THE COMMISSIONER: That is a
21 very significant factor.

22 MR. BINNING: It is, that is one
23 of our problems. I think they are free riders.
24 I don't think there is any other way -- we have
25 been attempting, Mr. Becigneul doesn't like to
26 use that term, but we have been attempting during
27 the last two years and we are making serious
28 attempts and we are doing our best to try to
29 sign up as many of these people who created
30 this employment as members.

1 MR. BECIGNEUL: We have got about
2 20 in the last two years.

3 MR. BINNING: We are attempting,
4 by persuasion to say, "Look, it is in your interest
5 and our interest to have a solid front", but
6 we still have not been successful in getting
7 anywhere close to the type of support that we
8 would like.

FJN 9 THE COMMISSIONER: If these
10 pressures have been discussed, why not prevent
11 the employment of strike breakers, why not
12 prevent the employment of strikers. One
13 would complement the other.

14 MR. BECIGNEUL: I think we
15 should mention like, in 1965 when we take a
16 vote and there is a large membership of say,
17 3000 and there are 2000 working elsewhere,
18 they vote to continue the strike because they
19 are all getting paid and the thousand men
20 who are there needing the money, their vote
21 doesn't count. We say here the man is really
22 affected and he is low on the totem pole.

23 THE COMMISSIONER: I must say
24 I didn't realize it was an established practice
25 in anticipating a strike to make provision
26 for re-employment.

27 MR. BINNING: Oh, yes.

28 THE COMMISSIONER: Pending that - -
29 it is temporary re-employment. Otherwise
30 they would completely sever their relationship

1 with the struck plant.

2 MR. POLLOCK: Well, in the
3 construction industry it may not be temporary
4 employment: It may be permanent employment,
5 permanent as the construction industry lends
6 itself to.

7 MR. BINNING: I am not avoiding
8 the question you asked and perhaps I will come
9 back to it ---

10 THE COMMISSIONER: Yes, I would
11 like to hear more on that. I would just like
12 to point out that you do present the factors
13 of a new situation.

14 MR. BINNING: Another thing
15 too that can be added to this: Their contracts,
16 like Pigott's contract, we hear different
17 rumours but for the most part their contracts
18 expire at the same time as T.C.A.'s. They
19 not only pick up the terms but pick up the
20 term of the contract, which in this case is
21 April the 30th and they then sign what is
22 called an interim agreement. Now, an interim
23 agreement provides, as Mr. Pollock mentioned,
24 the provision that they will pick up any
25 agreement that is finally negotiated, but also
26 often, ^{as} /it did in 1965, it also contains a
27 premium payment during this period, I think it
28 was a quarter, some of the interim agreements
29 that we saw, that we happened to see and got
30 hold of. Also - you see, they paid an extra

1 quarter above the existing rates ---

2 THE COMMISSIONER: Who did?

3 MR. BINNING: These other
4 employers during the strike period. They
5 paid an extra quarter over and above the
6 existing rate. There was also a check-off
7 of that quarter into the union strike fund.

8 THE COMMISSIONER: Which went
9 to those who didn't get the employment?

10 MR. BINNING: Right. So they
11 not only created employment but they also
12 reimbursed the strike fund.

13 THE COMMISSIONER: That has
14 become an established part of the procedure.

15 MR. BINNING: We were
16 surprised that it happened. Here is what
17 happened: One of these employers checked
18 off this 25 cents and in error, forwarded it,
19 together with the welfare payment. It was
20 then deposited in the welfare accounts and
21 cheques can only be issued on that account
22 when an employer trustee and a union trustee
23 sign. So, Mr. Becigneul had to sign the
24 cheque so when it came on his desk he said,
25 "Well, what is this for?" and they said, "Well,
26 they wrongly paid these moneys into the
27 welfare fund when they should have gone to
28 the strike fund".

29 THE COMMISSIONER: That is done
30 by a member of your Association?

1 MR. BINNING: Not in that case,
2 no.

3 THE COMMISSIONER: How did this
4 officer have anything to do with it?

5 MR. BINNING: Because it was
6 welfare. Even though we only have 50 per
7 cent, or represent 50 per cent of the employers
8 effectively ---

9 THE COMMISSIONER: The agreement
10 gives you the power to deal with all these
11 welfare payments?

12 MR. BINNING: Right. It costs
13 us money too, by the way, to have these
14 trustees sitting there all the time.

15 MR. BECIGNEUL: I think we
16 should mention that all the employers in the
17 City of Toronto, whether they be corporations
18 or what they are, pick up the terms and
19 conditions of those agreements and they pay
20 into our welfare fund irrespective of whether
21 they are members or not, like Ontario Hydro,
22 Canadian National Exhibition, the Board of
23 Education, Metropolitan Toronto, they all
24 contribute to the welfare fund but they are
25 not necessarily members.

26 THE COMMISSIONER: You administer
27 the whole welfare payments?

28 MR. BECIGNEUL: On a joint
29 basis.

30 MR. BINNING: The three employer

1 trustees are appointed by the Association, the
2 general contractors' section of the Association,
3 so that is how Mr. Becigneul dealt with that
4 cheque. So it really creates a double problem
5 for us, not only that they create more
6 employment during this strike, but also that
7 they contribute to a strike fund.

8 MR. POLLOCK: They have not
9 learned that in unity there is strength.

10 MR. BINNING: No, part of the
11 problem, and looking at it from their point
12 of view, I really have no sympathy with what
13 they do, but looking at it from their point
14 of view, it is very difficult in this field,
15 to be honest with you, to run an association.
16 I guess in life today nothing is simple.

17 THE COMMISSIONER: I suppose
18 you have the constitution of this Association?

19 MR. BINNING: Correct.

20 THE COMMISSIONER: And it
21 doesn't have any provision requiring that
22 loyalty which might be desired?

23 MR. BINNING: No. Really,
24 we are left with the power to persuade and
25 maybe that is all we want to be left with.
26 We are not sure we want you to do anything
27 about this particular facet.

28 MR. POLLOCK: We are not
29 sure we will.

30 MR. BINNING: This year will

1 be our test because we have also prepared for
2 a strike. The only way we can prepare for a
3 strike is that we can attempt to persuade
4 others of our position so that they will not ---

5 THE COMMISSIONER: When you
6 say, "we are preparing for a strike" - you
7 yourselves don't carry on work, you represent
8 employers who do?

9 MR. BINNING: Correct. We
10 are attempting to persuade others not to
11 expand their operations while we are on
12 strike.

13 THE COMMISSIONER: When you
14 say "we", who are "we"?

15 MR. BINNING: The Association.

16 THE COMMISSIONER: You don't
17 go on strike. You have an employer belonging
18 to your Association who is going to face a
19 strike?

20 MR. BINNING: Right.

21 THE COMMISSIONER: You act
22 for him?

23 MR. BINNING: Right.

24 THE COMMISSIONER: When you
25 say "we", you mean him or any other person
26 in the same position?

27 MR. BINNING: All of the
28 Association. We have been attempting to persuade
29 those outside of the Association who created
30 employment last time, not to create that employment.

1 THE COMMISSIONER: Don't the other
2 members of your own Association create that
3 re-employment?

4 MR. BINNING: No.

5 THE COMMISSIONER: That is what
6 I asked you before.

7 MR. BINNING: I am sorry if we
8 misled you. We have to talk first of all
9 about general contractors. They are the people
10 who sign that agreement. During that last strike
11 they did not hire anybody.

12 THE COMMISSIONER: The general
13 contractors?

14 MR. BINNING: Right. Hydro is
15 a sort of a club member if I may use that term,
16 has club house privileges, but is not active
17 in this part of the business. Does that
18 straighten that part out?

19 THE COMMISSIONER: This agreement
20 that you have applies to your group called
21 general contractor?

22 MR. BINNING: It is binding on
23 those general contractors. The Hydro pick
24 up that agreement but they have to sign it
25 individually. We don't bargain on their behalf.
26 Does that clarify that point?

27 THE COMMISSIONER: Yes, they
28 are outside of this group as a group in themselves.

29 MR. BINNING: That is correct.

30 We would not like you, sir, to

1 recommend that during a strike the employers
2 not be permitted to carry on operations and
3 the employees not be permitted to be employed.

4 THE COMMISSIONER: There has
5 never been a suggestion of that but there has
6 been a suggestion that the employer will not
7 employ outside help and the striking workers
8 will not be allowed to take new employment
9 from somebody else during the purpose of
10 maintaining their stand in the strike but
11 anyone on the staff of that company may go
12 back and forth without any difficulty or
13 obstruction.

14 MR. BINNING: Well, probably ---

15 THE COMMISSIONER: All I am
16 saying is that those have been a couple of the
17 ideas which have been considered, that is all.

18 MR. BINNING: Just without
19 thinking too strongly about it, we would be
20 opposed to it. The implications to us are
21 rather grave in this situation.

22 THE COMMISSIONER: How?

23 MR. BINNING: Perhaps I am
24 thinking about other clients as well as T.C.A.
25 at this moment.

26 MR. POLLOCK: It perhaps does
27 not lend itself to the construction business
28 because of the lack of continuity of employment
29 and no employee relationships.

30 MR. BINNING: From the employee's

1 point of view it probably lends itself better
2 to the construction industry than any other.

3 THE COMMISSIONER: Of course
4 it does because it involves the abolition of
5 the picket line and you won't have a whole
6 building held up in work because half a dozen
7 bricklayers go on strike.

8 MR. BINNING: It might be an
9 appealing idea to the construction industry,
10 to be honest with you.

11 THE COMMISSIONER: I think there
12 are certainly some factors that are inducive
13 to it.

14 MR. BINNING: Certainly from
15 our point of view it certainly would have
16 improved our situation in 1965, there is no
17 doubt about that to be perfectly honest with
18 you.

19 THE COMMISSIONER: It is perfectly
20 honesty of you to say so.

21 MR. BINNING: If I may digress
22 for a moment, the situation where you are
23 dealing with small employers in an industrial
24 situation where perhaps the unions, say, like
25 the United Steelworkers, are in a far better
26 situation financially to go along with an idea
27 like that where they could support the workers
28 for maybe three or four weeks from the funds
29 that they have available, whereas, a small
30 employer could not exist.

1 THE COMMISSIONER: I have not
2 suggested the whole of the system because he
3 might be permitted to employ strike breakers.

4 MR. BINNING: If I can only
5 speak for the construction industry, I would
6 say that it might be appealing. Having thought
7 it out carefully, the idea is appealing to me,
8 certainly from our point of view. I don't
9 know about Mr. Becigneul. Do you have any
10 comments on that?

11 MR. BECIGNEUL: No.

12 THE COMMISSIONER: As far as
13 we have seen these are new ideas and you have
14 to think them out.

15 MR. BINNING: Right. There is
16 another idea that has been talked about for
17 some time and I might introduce it at this
18 time and this is the idea of certifying an
19 employer group as a bargaining agent for all
20 of the employers in a particular geographical
21 area. Now, as you know, the Ontario Labour
22 Relations Board in the construction industry,
23 certifies the carpenters' union for employment
24 in a 25 mile area, just roughly speaking,
25 it is broader than that, but let us say that.
26 It has been suggested from time to time that,
27 let us say Toronto Construction Association, if
28 it represents a majority of the employers in
29 that geographical area, is then created by
30 certification or some other form, to be the

1 bargaining agent for all of the employers.

2 THE COMMISSIONER: Doesn't the
3 Act allow something of that sort now?

4 MR. BINNING: No, not a form
5 of compulsory representation.

6 MR. POLLOCK: It is a voluntary
7 association?

8 MR. BINNING: It is voluntary,
9 correct.

10 THE COMMISSIONER: You would
11 like, by majority, to compel all.

12 MR. BINNING: Right. That has
13 been suggested, I am saying that is an alternative
14 to what you have suggested but we are still
15 left with the same problem of during a
16 strike.

17 THE COMMISSIONER: You are not
18 doing away with that, you are merely having
19 a new agent to make an agreement?

20 MR. BINNING: They also
21 suggested, sir, that the formula that you
22 drew up some time ago, which has given us
23 no end of trouble, be applied to this situation
24 as well. So, if I might call it your formula,
25 would apply and even if he did not choose to
26 join the association, he would have to contribute
27 to its support.

28 MR. POLLOCK: The way it stands,
29 what are the advantages accruing to an employer
30 to belong to your Association?

1 MR. BINNING: From the labour
2 relations point of view?

3 MR. POLLOCK: Are there other
4 fringe benefits that might attract somebody
5 to joining your Association? It seems to me
6 that somebody sitting on the outside gets all
7 of the advantages and none of the disadvantages
8 of belonging to your Association.

9 MR. BINNING: I think that is
10 probably true. There are other things but they
11 are only, once again, club house privileges.
12 A golf club is established to play golf and
13 also has club house privileges. T.C.A. has
14 club house privileges but the most important
15 thing in my opinion, and I will speak for
16 myself here, from looking objectively at the
17 Association, is labour relations. This is
18 the golf course, as it were.

19 THE COMMISSIONER: And if you
20 had some kind of tribunal with a certain field
21 of liberty of action to readjust in special
22 cases because there are so many features to
23 some of these situations that it is difficult
24 to have one general rule that fairly applies
25 to all, but with a certain area of discretion
26 and assuming that they are competent and all of
27 that, you might be able to adjust more unique
28 or special situations than you can under the
29 ordinary cut and dried rules.

30 MR. BECIGNEUL: I think maybe I

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1 should mention here, with regard to membership in
2 the Toronto Construction Association, there are
3 other privileges that they do exercise, even
4 the members who are outside. There are two
5 bid depositories for electrical and mechanical
6 and steel - three.

7 MR. POLLOCK: Bid depositories?

8 MR. BECIGNEUL: Right. They
9 handle their bids through the bid depository
10 and it is handled through the Toronto Bid
11 Depository in Toronto Construction Association.
12 All outside contractors use that service, they
13 avail themselves of that service but they don't
14 sign with us because when there is a strike then
15 they are affected so it is easier to be on the
16 outside rather than inside. But there are
17 other facilities that they use. There are also
18 planning room facilities for around 100 men. They
19 come down and examine the plans and see what
20 you have on the different projects in Toronto
21 or in Ontario, they can see the plans there.
22 So they do use these facilities in the other
23 areas but they do not belong, because they
24 become bound by the collective agreements.

25 MR. POLLOCK: That seems to be
26 the crux of the problem. They can get as much
27 advantages out of not being bound by this, or
28 more advantages than in membership.

29 MR. BECIGNEUL: Right.

30 THE COMMISSIONER: What are they

1 free from that the others are bound to?

2 MR. BECIGNEUL: They have the
3 right to work when there is a strike.

4 THE COMMISSIONER: That is
5 an internal requirement of your Association?

6 MR. BECIGNEUL: That has nothing
7 to do with our Association.

8 THE COMMISSIONER: Binding on
9 your own members but not on them.

10 MR. BECIGNEUL: Right.

11 MR. BINNING: But getting back
12 to the point that you raised, I knew Mr. Becigneul
13 wanted to put a footnote on my comments and
14 I gave it as my personal opinion and I won't
15 hold him to that, but this concept of a tribunal
16 is, once again, attractive. This idea, for
17 example, if you were thinking in terms in the
18 back of your mind of compulsory arbitration ---

19 THE COMMISSIONER: Not necessarily.

20 MR. BINNING: Maybe that was
21 in the back of your mind.

22 THE COMMISSIONER: It is not
23 associated with that. I think we all agree now
24 that there are some areas of labour which we
25 call essential industry, but I am dealing
26 freely with the rest of the field.

27 MR. BINNING: Let us include it
28 then, just for the purposes of the comments I
29 wish to make. I think it, once again, is
30 attractive, the idea of a tribunal to the

1 construction industry. The reason why it is
2 attractive is that certainly in regard to all
3 of the costs of labour, they are pretty well
4 fixed, certainly in the Toronto area; in other
5 words, these outside contractors do not get
6 any better rate than our people get. They just
7 pick up the same rate. Basically, aside from
8 this privilege of working during a strike
9 period, they don't get any other greater privileges,
10 at least I hope not in the general scheme of
11 things. I don't believe they do so; in that
12 respect any dispute between unions and
13 employers in the construction industry, because
14 it binds all employers, is probably the type
15 of thing that could go to a tribunal because
16 it is going to affect everybody the same way.

17 THE COMMISSIONER: And it
18 doesn't affect the wage.

19 MR. BINNING: That is right.
20 If the tribunal says that the wages should be
21 \$5 rather than \$4, it is going to affect everybody
22 the same way so it is not going to be costly
23 to the individual. It might be costly to
24 the public and I think the most important
25 adjective that you used when you suggested this
26 was the word "competent".

27 THE COMMISSIONER: I quite
28 agree. It is vital and it must command the
29 respect of all parties.

30 MR. BINNING: That is correct.

1 THE COMMISSIONER: I think
2 humanity can produce that sort of thing. They
3 have a great respect for the tribunals in
4 Australia and all of these, apart from wages -
5 I don't know whether you can call them compulsory
6 arbitration or not - but these matters are
7 settled by tribunal and over a period of
8 time they have reached a stage where I think
9 both sides would not surrender that system.

10 MR. BINNING: The only thing
11 that concerns us about this whole idea is
12 the one tribunal we have dealt with, the
13 Ontario Labour Relations Board, I think the
14 reason for its original existence was basically
15 to protect the workers. I think that is
16 the basis for that legislation. Now, in the
17 construction industry, of course, we have
18 gotten around to the point where probably the
19 balance is there or may even be extended. We
20 don't have great respect, I think is a fair
21 statement, for that tribunal.

22 THE COMMISSIONER: Well, it is
23 more or less concerned with procedure.

24 MR. BINNING: Yes, but they
25 also have a great deal of power to effect
26 various things. For instance on the question
27 of illegal strikes, when they go to get
28 declarations down there, these are very
29 important. We, for example, have gone as
30 far in our letter to you - and this really is

1 a problem - about what effective methods, and
2 this comes back to your tribunal, what effective
3 methods can we have to enforce even the present
4 provisions of the Labour Relations Act, they
5 are not effective right now. I realize that
6 perhaps you can be critical of employers who
7 are not using what is there but it is too
8 cumbersome and too costly to use what is there.

9 THE COMMISSIONER: What has
10 been suggested and discussed, I think even
11 yesterday, would be the appointment, say, of
12 a public officer who is unrelated and uncontrolled
13 by anybody except the duties of his office,
14 by any influence except the duties of his office.
15 Well, theoretically, take a policeman, he is
16 a public officer. He is not the agent of the
17 City of Toronto or any other municipality; he
18 acts in the true sense of an individual severed
19 from authority other than law. Now, you take
20 this ombudsman. You can see just such a man
21 who acts freely and independently with such
22 security of tenure as ^{to} enable him to be
23 independent. That is a conception I think we
24 have to take into account.

25 MR. BINNING: I think this is
26 very true but, once again the problem - and I
27 realize it is a problem - is competency. This
28 is the great fear that we have in any new
29 legislation to be honest with you, is the fear ---

30 THE COMMISSIONER: Quite, I agree.

1 MR. BINNING: That incompetent
2 people may be appointed.

3 THE COMMISSIONER: That is true
4 but isn't that a risk in all tribunals that
5 society takes up? It is so difficult to
6 anticipate the development of a man who is
7 appointed to a serious responsibility.

8 MR. BINNING: I agree, our whole
9 judicial system is based on this type of thing.

10 THE COMMISSIONER: Exactly.

11 MR. POLLOCK: Based on what?
12 Incompetence?

13 MR. BINNING: I didn't say
14 "incompetence", no - on this risk that you
15 have to take. But the problem is, in creating
16 such a tribunal, right now we do have a certain
17 amount of control over the bargaining situation.
18 Let us talk about compulsory arbitration, we
19 do have a certain amount of control. Now,
20 if you were to appoint an arbitrator or a
21 board of arbitration and give them the power
22 to decide finally as to the new collective
23 agreement, if we might use those terms, then
24 it would take part of our control away from us.

25 THE COMMISSIONER: Well, your
26 ultimate effective control, yes, but not your
27 ability to present considerations that ought
28 to appeal to him.

29 MR. BINNING: That is correct.

30 THE COMMISSIONER: And they

1 develop that - I speak now of Australia merely
2 by way of illustration - they have developed
3 a system there that is remarkably satisfactory,
4 but in the course of its action it has trained
5 labour men and employer men to state the cases
6 much more effectively than any member of the
7 bar might be able to do it and they take a
8 pride in that, they take a deep interest in it.
9 It applies to so many of the people that it is
10 part of their attitude to living in the
11 community. Of course, all these new ideas are
12 inclined to repel people because they are
13 strange to them.

14 MR. BINNING: That is correct
15 and also I think because you lose part of that
16 control, even though it opens up a new area
17 to you, the power to persuade that your
18 position is a correct position.

19 THE COMMISSIONER: And there
20 must be strong considerations that will lead
21 to the disruption of that final control of
22 the individual.

23 MR. BINNING: That is correct.

24 THE COMMISSIONER: And I think
25 you find that in public consequence, public
26 demand, the interest of the public has been
27 overlooked in so many cases. Today we have
28 a society of functions and those functions are
29 controlled by small groups of workers and they
30 are very vital to that community and they

1 secure to every member of the community the
2 privileges and that standard of living which
3 he seeks but you can disrupt that very seriously
4 and therefore, it seems to me that you have
5 a changing society which demands certain changes
6 just as you demand changes in law and certain
7 modifications to suit the new conditions.

8 MR. BINNING: Right. But you
9 speak primarily when you make these statements
10 in terms of particular industries, don't you
11 really?

12 THE COMMISSIONER: I have those
13 in mind, yes, and there may be situations in
14 which modifications should be made.

15 MR. BINNING: I think you have
16 to distinguish between public inconvenience
17 and public rights.

18 THE COMMISSIONER: Yes, within
19 limits, but even that can become of the utmost
20 importance.

21 MR. BINNING: I agree.

22 THE COMMISSIONER: The question
23 of time is always involved in that.

24 MR. BINNING: I mentioned to
25 you earlier the background on jurisdictional
26 disputes. This is a place where a tribunal
27 almost has to exist.

28 THE COMMISSIONER: And we have
29 had to consider the question of having those
30 settlements made in this country.

1 MR. BINNING: The real danger
2 in this, as I see it is, that perhaps the government
3 then will be setting guide-lines, as it were,
4 that this tribunal will be almost compelled to
5 follow.

6 THE COMMISSIONER: I don't think
7 the government is interested in anything
8 except broad policies such as the tendency
9 to inflation, or there might be other features
10 of the economy generally. There might be
11 international relations which might be introduced
12 but only as factors to be taken into account.

13 MR. BINNING: Even now, for
14 example, not being an economist, I have noted
15 that the International Monetary people who
16 control this pegging of rates and everything,
17 strongly suggested to Canada that they are in
18 a very vulnerable position right now because
19 of inflation, that the monetary position of
20 Canada in regard to the supply of Canadian
21 funds as against American funds, has thrown
22 us into a very serious position.

23 THE COMMISSIONER: Then why
24 shouldn't that fact be presented to any
25 tribunal which is considering even the question
26 of wages as a fact to be taken into account
27 and to be elaborated by men whose judgment
28 is better than that of the average artisan?

29 MR. BINNING: Well, certainly
30 as far as the construction industry is concerned,

1 in my evaluation of it, it is a very attractive
2 proposition provided that competency is a
3 prime condition.

4 THE COMMISSIONER: That is the
5 condition of it. If you have a certain number,
6 though, it is rather remarkable that in
7 Australia there is well exhibited, the coercion
8 of office, the effect of office upon men in
9 sharpening their sense of responsibility and
10 their objectivity and their general enlargement
11 of understanding and today you have, in many
12 cases, the employer preferring a man who came
13 up from the labour ranks and the labour union
14 preferring a man who came up from the employer
15 ranks.

16 MR. BINNING: To get the inside
17 picture, as it were.

18 MR. POLLOCK: Sometimes he
19 bends over a little backwards to appear upright.

20 THE COMMISSIONER: I suppose
21 he does reach maturity in office and that, to
22 me, is the important thing.

23 MR. BINNING: The reason why
24 I think it is attractive is largely because
25 the employer in the construction industry has
26 lost control of his employees and that is why
27 I say it is attractive to the construction
28 industry because the bargaining position of
29 employers in the construction industry is not
30 nearly as strong as employers in the industrial

1 situation.

2 THE COMMISSIONER: If you take
3 into account the effect now given to the
4 picket line which has become the symbol of
5 a barrier, then you put your finger upon the
6 weakness of the employer position in the
7 construction industry.

8 MR. BINNING: Correct, because
9 you don't need mass picketing in the construction
10 industry; you need one picket and one picket
11 only. You don't need five.

12 THE COMMISSIONER: One man can
13 represent, he symbolizes a barrier that other
14 people won't pass.

15 MR. BINNING: When I indicate
16 in our letter that injunctions are not a
17 great problem in the construction industry
18 because I feel that really the great argument
19 of labour is in regard to mass picketing ---

20 THE COMMISSIONER: No doubt that
21 is what has been in the back of their mind.

22 MR. BINNING: Right, and I don't
23 know whether you have looked at the analysis
24 but if you analyse the construction injunctions
25 you will find that there were only about four
26 out of 141 involved picketing in conjunction
27 with a legal strike and an overwhelming number,
28 137 out of 141, involved an attempt to circumvent
29 the provisions of the Labour Relations Act. So
30 we are really not involved in that problem and

1 you are right when you say that a single
2 picket can shut down a job like the Toronto-
3 Dominion Bank and that is a weakness, that
4 is symbolic of our weakness.

5 THE COMMISSIONER: There is
6 no doubt about that.

7 MR. BINNING: There is no doubt
8 about that.

9 MR. POLLOCK: You say that the
10 employers have lost control of their employees.
11 They have really abdicated the control of their
12 employees.

13 MR. BINNING: They did.

14 MR. POLLOCK: They don't
15 employ them long enough at any one period
16 of time to establish a working relationship
17 with them of any type of security, so the only
18 employment loyalty exists between the employee
19 and the union. So far as the picket line is
20 concerned, if your plasterers go on strike at
21 a particular plant or a particular site, you
22 don't need a picket line, as far as plasterers
23 are concerned, if the only source of plasterers
24 is the union, because they are certainly
25 not going to send you any more.

26 MR. BINNING: To be honest with
27 you, you are not only right in that respect
28 but if we get into a situation like we did
29 two years ago where we are dealing with six
30 basic trades, and let us say that the first one

1 to get in a struck position is the bricklayers,
2 now the bricklayers can go on strike and they
3 won't establish picket lines. They will not
4 be permitted by the Toronto Building Trades
5 Council which represents all of the unions to
6 establish trade picket line on a job site
7 until someone attempts to take away their work.

8 THE COMMISSIONER: That is limited
9 to the bricklayers?

10 MR. BINNING: Right.

11 MR. POLLOCK: Why is it limited
12 to bricklayers?

13 MR. BINNING: Because if the
14 others joined, it would be an illegal strike.

15 MR. POLLOCK: But why is that
16 restriction on the bricklayers?

17 MR. BINNING: It applies to
18 everybody, I just said "take for example".
19 You will very rarely see a picket on a construction
20 site unless all of it is shut down or unless
21 someone else is doing that union's work on
22 that job site, at least they think they are
23 doing it.

24 THE COMMISSIONER: What about
25 the strike up at the Sault?

26 MR. POLLOCK: That was not
27 construction.

28 MR. BINNING: That was inside,
29 chimneys, the maintenance people.

30 MR. BECIGNEUL: I think in

1 1965 we had three trades on strike at the same
2 time, the bricklayers, carpenters and cement
3 masons but there were no picket lines, all
4 the other 25 trades carried on their operations.

5 MR. BINNING: But you are right
6 it is just an order that goes out, they don't
7 even need pickets to stop work.

8 THE COMMISSIONER: They have
9 a monopoly there and also the solidarity of
10 the union.

11 MR. BINNING: Right.

12 MR. POLLOCK: Well, at least
13 as far as the construction industry, both the
14 employers and the unions are agreed that it
15 is a kind of a unique animal and perhaps we
16 can discuss for a moment another aspect of a
17 tribunal with particular relation to the
18 construction industry, bearing in mind the
19 difficulties that you have with your employers
20 and the difficulty that exists between one
21 union and another in jurisdictional questions
22 and the difficulties that exist from one
23 locality in the province and another locality
24 with regard to the transfer of contractors and
25 the transfer of employees from one community
26 to another. It has been suggested that a
27 board or a committee or some type of a
28 council with more powers than a voluntary
29 association, be established dealing with the
30 construction industry only on a province-wide

1 basis which would have an opportunity to discuss
2 and settle the jurisdictional problems and
3 questions prospectively so that all the unions
4 that would possibly be interested would have
5 an opportunity to make their position and
6 any employer who is interested could make his
7 position and then if they can't agree, somebody
8 would have the power to say "All right, ceiling
9 tile will be that union". Something else
10 will be somebody else's union and by that
11 method, restrict the overlap of jurisdictions
12 in unions that exist by virtue of very broad
13 constitutional provisions that they have.
14 There are many jurisdictional problems which
15 could be problems which are already settled,
16 everybody knows what the answer will be and
17 they are accepted. Occasionally somebody
18 refuses to accept that answer but those types
19 of things can be codified and as new situations
20 arise, they can be discussed again without
21 having to go through any kind of procedure
22 of having a picket or a strike or anything
23 like that and these arrangements can be made
24 beforehand for the province. Also, the
25 rates of remuneration can be negotiated and
26 fixed for the province, different zones and
27 different rates, so you have a free interchange
28 of labour and a free interchange of employment
29 on the basis of these different zone rates,
30 the union being recognized as the labour broker

1 as it is functioning and management being
2 recognized as an employer and drawing from
3 this work force, "I want so many of these and
4 so many of those". If you have not got the
5 employer-employee relationship anyway you
6 don't lose anything and you are recognizing
7 something that is already existing but you
8 are putting it in some order. What do you
9 think about that situation? You may speak
10 individually, I am sure you can't speak for
11 the Toronto Construction Association at this
12 time.

13 MR. BINNING: Most of my
14 comments are probably not on behalf of the
15 Association.

16 MR. POLLOCK: Some of the good
17 ones, I hope, are.

18 MR. BINNING: I think when
19 Mr. Becigneul doesn't say "no", this is true.

20 MR. POLLOCK: Well, we will
21 sound it out and if Mr. Becigneul says "aye"
22 then we will take it from the Toronto
23 Construction Association.

24 MR. BINNING: I have worked
25 very closely with a lot of these people for
26 many years. These people are not made for
27 that type of thing that you propose. It is
28 a highly individualistic situation in the
29 construction industry. Most of the people
30 have come up through the ranks, most of them

1 started as carpenters. You don't find too many
2 professional engineers who are heads of these
3 companies. You more often than not find
4 someone who has come up as a carpenter and who
5 has started as a small employer and has worked
6 up and it is very difficult to get ten of these
7 people to agree on anything without envisioning
8 a province-wide situation.

9 We have enough difficulty
10 controlling the labour situation in Toronto
11 without having to worry about problems that might
12 be province-wide. There have been a lot of
13 deals made in the construction industry more
14 under than on top of the table. You would have
15 to almost see a new generation of contractors
16 before that type of thing would work and before
17 it would have the respect that you speak about
18 for a tribunal. You would be changing the
19 whole course and way of thinking of people.

20 MR. POLLOCK: I don't know whether
21 on analysis you would really lose very much
22 in the practical end. You say, "I am losing
23 my freedom to do this" and if you look back
24 and see how often you had an opportunity to
25 exercise that freedom or whenever you tried
26 to exercise it, somebody with some other power,
27 also a freedom, stalemated you, you may
28 be prepared to give one for the other. It
29 certainly won't function on a completely
30 voluntary basis, if it requires consensus from

1 everyone because there is always somebody's
2 immediate short-term interest that is going
3 to be affected adversely, but if you operate
4 on the basis of the greatest good for the
5 greatest number and put teeth into it, then
6 perhaps, in the long run, people will say,
7 "Well, it is not a bad idea"

8 MR. BINNING: We recently
9 had some agreements provide for a joint council
10 for any disputes under the grievance, will go
11 to a joint council of union representatives
12 and company representatives. We recently
13 had a problem, one of our general contractors
14 was affected, and it was a mechanical problem.
15 We don't control the mechanical contractors.
16 We submitted this dispute which was without
17 foundation. The union claim was that it was
18 without foundation and the employer situation
19 could not be substantiated either in regard
20 to the general contractor. It went to that
21 joint council and they issued an award against
22 the argument that we were basing and we were
23 flabbergasted; in other words, they were both
24 serving their own purpose in this award. Now
25 really, I think when you suggest this being
26 province-wide, you are thinking primarily of
27 jurisdictional dispute. I think that would
28 be the basis for your argument. There is no
29 great geographical problem as we see it, to
30 be honest with you.

1 MR. POLLOCK: There isn't from
2 the standpoint of one particular locality. There
3 is when you talk about employees trying to move
4 from Toronto to London and Toronto to Windsor
5 or contractors who are not members of the
6 Association in Windsor moving into Windsor and
7 having to pay a premium of some kind because
8 they are outside the ambit of the Association.
9 Also, it accomplishes some of the problems
10 that these free riders are now getting away
11 with.

12 MR. BINNING: But that type of
13 freedom must be almost a conspiracy between
14 the employers --

15 MR. POLLOCK: That is your word
16 but I think it is accurate.

17 MR. BINNING: We really don't
18 have that problem as far as our basic trades
19 go. I know there might be evidences of that
20 in some of the other trades and sub-trades
21 in Toronto but if you are mixing in with that
22 jurisdictional dispute, I would like you to
23 isolate and I would like you to suggest that
24 a very drastic recommendation on jurisdictional
25 disputes is that the craft concept be eliminated.
26 That is almost as drastic as suggesting a
27 tribunal might be.

28 THE COMMISSIONER: As a matter
29 of fact, with the exception of sub-section
30 (8), I think it is, which was put in after Mr.

1 Goldenberg's recommendation, with the exception
2 of that, it is contemplated that it will be
3 an order of the board if there is any dispute
4 in relation to jurisdiction.

5 MR. POLLOCK: 66 (8).

6 THE COMMISSIONER: And, therefore,
7 what we have been asked is simply to recommend
8 the elimination of sub-section (8), which
9 leaves it with the board.

10 MR. BINNING: But there are
11 provisions in the earlier sections of the Act
12 for the recognition of a craft.

13 MR. POLLOCK: 6 (2), but that
14 is the hiding-off of a craft unit

15 THE COMMISSIONER: I don't think
16 it deals with jurisdictional disputes.

17 MR. BINNING: For example, when
18 the carpenters apply for certification, it is
19 all carpenters and that word "carpenter" is
20 defined by the board in several decisions
21 and the board will say "All bricklayers". What
22 is a bricklayer?

23 THE COMMISSIONER: But they
24 form a union, they constitute both a craft and
25 a union.

26 MR. BINNING: That is right
27 but we are suggesting that a proper unit,
28 probably on a construction site would be all
29 employees and only one union should represent
30 all of the employees on a construction site.

1 THE COMMISSIONER: You are
2 making construction a sort of industrial group.

3 MR. BINNING: Exactly. We are
4 suggesting that this should be considered.

5 THE COMMISSIONER: Just let us
6 keep to one thing --

7 MR. POLLOCK: Could we just
8 pursue this for a moment. Really, if you have
9 got unity of union interest and you have really
10 got that, you have got one big union. You
11 have got the council, if they are all agreed
12 as to the jurisdiction of something, sending
13 down the employees. As far as you are concerned,
14 they are an employment agency.

15 MR. BINNING: But when you get
16 the situation where an electrician will say
17 "I am sorry, I can't move that garbage can there
18 and I want to work on the plug behind it", we
19 have to get a labourer to do that and you have
20 to pick up the phone and phone down to the union
21 office to get a labourer and it takes 3 hours
22 and that electrician is standing there. You
23 have got a problem.

24 THE COMMISSIONER: Take section
25 66, now, just let us read it. You just read
26 that, the first sub-section.

27 MR. BINNING: That was put in
28 there primarily as a result of the Toronto-
29 Dominion fiasco. It might have been picked
30 out of the Goldenberg Report but the timing of it

1 coincided with a tremendous fiasco on that
2 Toronto-Dominion centre.

3 THE COMMISSIONER: That puts
4 the power in the board to decide these
5 jurisdictions. Then if you turn to sub-section
6 (8) you see there that where they have entered
7 into a collective agreement containing provision
8 requiring any difference between them to be
9 submitted to a tribunal.

10 MR. BINNING: That refers to
11 the National Joint Board in Washington.

12 THE COMMISSIONER: If you
13 eliminate that it is suggested that you really
14 bring it back to sub-section (1) but I notice
15 sub-section (7) says "Where a trade union
16 or employer has made an arrangement" Now
17 that word "arrangement" is used there whereas
18 a tribunal have agreed in the provision of a
19 collective agreement. If you put out (8)
20 what would be the effect of (7)? Doesn't that
21 really amount to the same thing?

22 MR. BINNING: Yes.

23 MR. POLLOCK: Well, (7) just
24 delays.

25 THE COMMISSIONER: Any kind of
26 an arrangement, certainly an arrangement
27 includes the provision in an agreement.

28 MR. BINNING: As a matter of
29 fact, none of our agreements have the provision
30 in (8) that is being requested.

1 THE COMMISSIONER: But it seems
2 to me that sub-section (1) is a good sub-section.
3 You can have an authoritative decision which
4 can be enforced or which ought to be able to
5 be enforced.

6 MR. BINNING: It is very
7 questionable whether it can be.

8 THE COMMISSIONER: In Ontario,
9 by an order? I mean you can declare illegal
10 any action that opposes it.

11 MR. BINNING: Has anyone gone
12 over this Toronto-Dominion dispute? We were
13 forestalled there and the problem we had there
14 is not solved by this amendment.

15 THE COMMISSIONER: Did the board
16 make an order?

17 MR. BINNING: No, but the
18 jurisdictional disputes commission made an
19 order.

20 MR. POLLOCK: Before we get
21 into that, let us take a short recess.

22 ---Short recess.

23
24 THE COMMISSIONER: Would you
25 just make a few remarks -- I think you made
26 a suggestion that one of the possibilities
27 would be to put all contractors in a certain
28 area under such an association as this, bind
29 them as you do the units of labour in a unit.

30 MR. BINNING: I was saying that

1 that has been a suggestion. Right now there
2 is a current study by Professors Crispo and
3 Arthurs on that very subject which will be
4 published in due course. We have a draft
5 of it but I guess we are not in a position
6 to release anything in it. It is called
7 "Countervailing Power in the Construction
8 Industry".

9 THE COMMISSIONER: That is a
10 good word.

11 MR. BINNING: It is a good
12 word.

13 THE COMMISSIONER: One of those
14 that was used by that Canadian Economist at
15 Harvard.

16 MR. BINNING: John Kenneth
17 Gilbreth. You would not see very many unless
18 you put a picture on the cover.

19 THE COMMISSIONER: When do
20 you expect that report to be out?

21 MR. BINNING: I expect it
22 will be out very shortly.

23 MR. POLLOCK: Who owns the
24 copyright on that?

25 MR. BINNING: Probably Toronto
26 Construction Association - no Canadian Construction
27 Association, but it does not solve our main
28 problem and that is why at this point I would
29 not think it is very important. It still
30 does not get around our problem that an employer,

1 even although he was within a certificate
2 issued by the board, could still continue to
3 work during a strike.

4 THE COMMISSIONER: He would not
5 come within the general contractor group and
6 be bound by the obligation not to.

7 MR. BINNING: It is only
8 persuasion.

9 THE COMMISSIONER: It is the
10 extent of compulsion. Suppose you compel
11 him to become a member as all employees are
12 compelled, well, he is subject to all the
13 terms that apply to that unit.

14 MR. BINNING: Yes, but he
15 could still work unless you also had a provision
16 somewhere that you could enforce against him
17 that he could not work.

18 THE COMMISSIONER: Yes, I am
19 assuming that.

20 MR. BINNING: They are not
21 including that in their draft.

22 MR. POLLOCK: The equivalent
23 of that, I suppose, is a no strike provision,
24 the unlawful strike. I suppose if the majority
25 of people who voted in the construction unit
26 to go on strike or not to employ people, then
27 perhaps they might be bound by that.

28 MR. BINNING: But you still
29 have to go further. You still have to say
30 what you have suggested sir, that you have to go

1 beyond that and say that during a strike ---

2 THE COMMISSIONER: You would
3 have to have a provision to that effect?

4 MR. BINNING: Right. Well, this
5 in itself does not solve our main problem. You
6 would have to go further and present the type
7 of thing that you have suggested so that is
8 really not a solution in itself. That is that
9 countervailing power - the accreditation, so it
10 is really no solution to our main problem. We
11 would have to go to the point you make that
12 during a strike you weren't permitted to hire
13 anybody outside. So that is really not the
14 solution.

15 MR. POLLOCK: So unless you
16 make the provisions of the check-off so
17 compelling that they would want to belong to
18 the Association ---

19 MR. BINNING: You would have to
20 go further, you would have to create penalties.
21 Otherwise, you would have to rely on your own
22 powers of persuasion.

23 MR. POLLOCK: Double the check-
24 off, or something.

25 MR. BINNING: Double the
26 check-off. This is a very broad area and I
27 don't think one that would be acceptable. It
28 is up to yourselves but I would like to go back
29 to this jurisdictional dispute.

30 MR. POLLOCK: Before you do that

1 I just want to get some estimate of figures.
2 What percentage of construction work force
3 is not included in the union?

4 MR. BINNING: Is that including
5 residential?

6 MR. POLLOCK: No, in your area,
7 first of all, let us deal with the commercial
8 and industrial areas. The point of my question
9 is this: If the union source was unavailable
10 to you, could you carry on any percentage of
11 your operation by employing non-union tradesmen?
12 What is the percentage of those non-union
13 tradesmen that might be available to fill that
14 gap?

15 MR. BINNING: Well, you would
16 have to pull them from residential work.

17 MR. POLLOCK: I suppose you
18 have to. I don't know where you would get
19 them.

20 MR. BINNING: Let us put it
21 this way, if this is an answer to your question.
22 It really doesn't give you a percentage. We
23 haven't been able to do it in the past. They
24 have not been able to carry on any part of the
25 operation with non-union. Effectively there is
26 no labour pool that we can call on during a
27 strike that is not within the power of the union.

28 MR. POLLOCK: Is that because
29 the terms are better on residential construction?
30 Or because you don't want to get a black eye

1 by employing these non-union people?

2 MR. BINNING: No, I think it
3 is largely because we thought, really we
4 couldn't get them, we couldn't get a
5 sufficient number of qualified people to do it.
6 We haven't even tried in other words and I
7 would not even suggest to them that they do
8 try because in our estimate there is no market,
9 there is no pool. Does that answer your
10 question?

11 MR. POLLOCK: Yes.

12 THE COMMISSIONER: You have
13 against you the consolidated force of all of
14 the other unions, say, five or six.

15 MR. BINNING: That is right.
16 For example, this year we negotiate with
17 6 basic trades. Now only two of them are
18 involved in this year's negotiations. Four
19 contracts continue into 1969 so, as you
20 mentioned, sir, if we would attempt to draw
21 on people, then we would get the picket lines
22 and then we would shut down the other four
23 trades as well.

24 Do you want further clarification
25 on 66 as to the problems?

26 THE COMMISSIONER: Except as
27 you are dealing with jurisdictional disputes.

28 MR. BINNING: On the Toronto-
29 Dominion Bank project, I was involved in it
30 but it has been a while ago; what happened was

1 that there was a dispute on this type of ceiling.
2 Now, Canadian Johns-Manville was installing
3 this type of ceiling under a sub-contract
4 from Pigott.

5 MR. POLLOCK: "This type of
6 ceiling" is suspended ceiling tile?

7 MR. BINNING: Yes. And Pigott
8 Construction was the general contractor. They
9 sub-contracted the work to Johns-Manville
10 and then there was another contractor called
11 Crump Sheet Metal, which is a wholly-owned
12 subsidiary of Pigott who used sheet metalworkers.
13 They installed the air-conditioning and the
14 heating.

15 MR. POLLOCK: Also in the ceiling,
16 the duct work in the ceiling?

17 MR. BINNING: All mechanical
18 to the extent of the duct work, but it had
19 nothing to do with this part of it. Canadian
20 Johns-Manville were not working in conjunction
21 with them. What happened in that case was
22 that the sheet metalworkers obtained an award
23 from the National Joint Board in Washington,
24 awarding them all of this work.

25 MR. POLLOCK: "All of this work"
26 is all of the suspension work?

27 MR. BINNING: Right. Now,
28 Canadian Johns-Manville had been installing
29 this type of work for several years in Canada
30 and had only been using carpenters up to some

1 work they were doing on the Royal Bank job which
2 is down on King Street. This happened before
3 the Toronto-Dominion. In that job the
4 carpenters were given 60 per cent of the work
5 by the Ontario Jurisdictional Disputes Commission
6 and the sheet metalworkers were given 40 per
7 cent; in other words, I think the sheet metal
8 placed the pans and the carpenters did the
9 installing of the framework. I am just guessing,
10 but this type of thing. So, Canadian Johns-
11 Manville applied to the Ontario Jurisdictional
12 Disputes Commission as soon as the sheet metal-
13 workers made this claim for 100 per cent of the
14 work. The Ontario Jurisdictional Disputes
15 Commission then awarded the same award that
16 they awarded on the Royal Bank which was a
17 logical thing to do, which was 60-40. The
18 sheet metalworkers then pulled off - and we
19 couldn't prove this, but Crump Sheet Metal,
20 a wholly-owned subsidiary of Pigott who were
21 installing the air-conditioning and had nothing
22 to do with the problem, some 70 or 80 men, I
23 think, did not report to work and, in fact,
24 they picked up their books and quit their
25 employment with Crump Sheet Metal and it was
26 on the basis - because we had several meetings
27 negotiating this - it was on the basis they
28 took the men off and no sheet metalworker
29 would report to Crump again on that job as
30 long as these sheet metals were not awarded

1 100 per cent of the work.

2 Now, the Ontario Jurisdictional
3 Disputes Commission award was registered in the
4 Supreme Court under the provisions of the Act.
5 But the question then is, even though it is
6 registered, what can you do with it? How can
7 you enforce it? All it says is that "This work
8 is assigned". Where are you going to get an
9 order saying that the sheet metal must ----

10 THE COMMISSIONER: I think
11 you said before you must resort in some way to
12 some kind of penalty.

13 MR. BINNING: Right, but even
14 with this amendment we still couldn't solve
15 the problem on the Toronto-Dominion centre, even
16 although this amendment was in there. They
17 can cease and desist, but what are you going
18 to cease and desist? You can't get an order
19 to make them work. No legislation will do that.
20 So we are lost.

21 THE COMMISSIONER: I was wondering
22 whether there is any social benefit which any
23 of the men receive who are in default, of that
24 sort which can be a factor. I am not familiar
25 with all your social assistance, but I base
26 it on this ground, that this is the repudiation
27 of a legitimate ruling in a legislative unit
28 and whether this would justify the restriction
29 or the withdrawal of public benefits to these
30 people, if there are any. I don't know what

1 they are but it is one means of making effective,
2 bringing to bear effective pressure upon people.

3 MR. BINNING: To speak on that,
4 they, although engaging, as we obtained a
5 declaration from the board, in an illegal strike
6 there was a shortage of sheet metalworkers
7 so they were just placed elsewhere. Had
8 they remained unemployed, they would not get
9 unemployment insurance. That is one of the
10 social pressures.

11 THE COMMISSIONER: Has the
12 province an unemployment insurance here?

13 MR. BINNING: No, that is
14 Dominion, but they would not get it when they
15 are out on strike.

16 THE COMMISSIONER: I think I
17 have heard of supplementary ---

18 MR. BINNING: S.U.B.?

19 THE COMMISSIONER: Yes.

20 MR. BINNING: That is negotiated,
21 we have an S.U.B. fund in one agreement. So
22 there is that type of social pressure, those
23 who do engage in such activities, but they
24 didn't need the money anyway, they were
25 working elsewhere.

26 MR. POLLOCK: They couldn't
27 get unemployment insurance anyway because
28 they quit the job?

29 MR. BINNING: That is right,
30 but they were working elsewhere.

1 MR. POLLOCK: They weren't
2 on strike.

3 MR. BINNING: They were on
4 strike against Crump and you can be on strike
5 even if you are working somewhere else. If
6 you act in concert it can continue to be a
7 strike and we did obtain a declaration of
8 an illegal strike even though they were
9 employed somewhere else.

10 THE COMMISSIONER: The
11 cessation is joint but the re-employment is
12 individual, isn't it?

13 MR. BINNING: But the strike
14 continues ---

15 THE COMMISSIONER: The individual
16 can't sever himself from the original employment.

17 MR. BINNING: But if he
18 severs in concert, he is engaging in an
19 illegal strike.

20 THE COMMISSIONER: He is only
21 ceasing work in concert. He is not severing.
22 He intends to go back when he strikes. It is
23 just a suspension of working, it is a cessation
24 of working.

25 MR. BINNING: We obtained a
26 declaration of illegal strike under the Ontario
27 Labour Relations Act.

28 THE COMMISSIONER: I daresay
29 you do, but take a man at this moment who is
30 on strike, but he says, "I am going to leave

1 this. I am going to go over to this plant in
2 Plattsburg". He severs all his relations
3 with the employer.

4 MR. BINNING: Right, but where
5 are you going from there, though?

6 THE COMMISSIONER: So far as
7 he is concerned, there is no further going at
8 all. The relationship has completely ended.

9 MR. POLLOCK: He has ceased
10 to be an employee and the strike definition
11 in the Labour Relations Act relates to "employees."

12 MR. BINNING: I still think you
13 have a strike situation. This argument was
14 raised in this particular case.

15 MR. POLLOCK: Do you have a
16 copy of this?

17 MR. BINNING: I am sure we
18 must have.

19 THE COMMISSIONER: You can't
20 expect a man to maintain the relationship of
21 employee against his will.

22 MR. BINNING: That is the very
23 point I make

24 THE COMMISSIONER: If he
25 individually says, "I am through" and I take
26 everything away and I sever all my relations,
27 what in heaven's name will hold him to that
28 relation?

29 MR. BINNING: We are not
30 discussing that.

1 THE COMMISSIONER: That is what
2 I am saying.

3 MR. BINNING: These people,
4 even though they severed, came back to Crump
5 afterwards as new employees.

6 THE COMMISSIONER: They could
7 come back on original terms?

8 MR. BINNING: But if employees ---

9 THE COMMISSIONER: They can
10 agree to any terms that may be retroactive
11 that they please.

12 MR. BINNING: If you say that
13 an employee can sever his relationship which
14 is very easy to do in concert, and it is not
15 an illegal strike, then the provisions of the
16 Labour Relations Act, insofar as the construction
17 industry is concerned, you are nullifying the
18 no-strike provisions of this Act.

19 THE COMMISSIONER: What provisions
20 are you referring to?

21 MR. BINNING: During the currency
22 of a collective agreement there shall be no
23 strike and there shall be no lock-out.

24 THE COMMISSIONER: I am assuming
25 there is no agreement, that the strike is legal.

26 MR. BINNING: To take your
27 argumen to its logical conclusion, you are
28 eliminating that provision in a construction
29 industry.

30 MR. POLLOCK: Right.

1 THE COMMISSIONER: I would not
2 agree with that at all because when a man
3 strikes he has in mind to return to that work
4 and that is why section 1, sub-section (2)
5 provides for the maintenance of that employee
6 relation.

7 MR. BINNING: Let us assume
8 there is a collective agreement in operation
9 as there was on that Toronto-Dominion Bank.
10 Crump was involved in an agreement that continues
11 so we are not talking about re-negotiation, we
12 are talking about during the currency. All
13 of Crump's employees went to Crump in concert
14 and said, "We are terminating our employment,
15 give us our unemployment insurance books, we
16 are terminating our employment right now". Now,
17 if that is not a strike, because it is a
18 termination of employment, then the no-strike-
19 no-lock-out provision, as far as the construction
20 industry is concerned, are useless, because
21 as we pointed out continually, there is no
22 continuing employment, there are no seniority
23 benefits so all a union would have to do
24 would be to tell their members to terminate
25 their employment and we don't even have the
26 benefits of this Act to say that it was an
27 illegal strike. Do you see our problem?

28 MR. POLLOCK: That also cuts
29 into the industrial situation too.

30 MR. BINNING: It could but

1 there are seniority provisions.

2 MR. POLLOCK: That would be
3 an incentive not to quit, but if you wanted
4 to quit on that basis and sever your relationship,
5 you could do it during the currency of an
6 agreement.

7 MR. BINNING: But it would be
8 most unwise, they could get discharged
9 permanently.

10 THE COMMISSIONER: Suppose you
11 don't go in a group at all, you go individually,
12 what you are saying is that you continue in
13 that sense in a state of peonage, you are in
14 servitude, you can't get rid of an employment
15 that you are through with.

16 MR. BINNING: I am not saying
17 that.

18 THE COMMISSIONER: That is
19 exactly what you are saying.

20 MR. BINNING: If they quit
21 five minutes apart, that is concert.

22 THE COMMISSIONER: I started
23 with the impression there was no concerted
24 going, the employees went individually.

25 MR. BINNING: You have got
26 to, at all costs, give the employee that right,
27 I would never challenge it but if he is told
28 to do it by one person who tells all of the
29 employees to do it on one job, that is concert,
30 that is illegal action, an illegal strike.

1 THE COMMISSIONER: How long does
2 that continue?

3 MR. BINNING: Six to seven weeks.

4 THE COMMISSIONER: Why do you
5 say six or seven weeks?

6 MR. BINNING: Crump had no
7 sheet metal employees for six or seven weeks
8 and couldn't get them.

9 MR. POLLOCK: In the general
10 concept. He was not referring to that specific
11 case.

12 THE COMMISSIONER: Suppose they
13 hire a dozen men and they say "Let us get out
14 of this hole, we will go to Detroit", and they
15 all go to Detroit and they take their families
16 there and they buy houses there, do you think
17 the strike still continues?

18 MR. BINNING: If they acted
19 in concert?

20 THE COMMISSIONER: If they
21 acted together. They happen to be a dozen
22 people who are friends and they say, "There is
23 open work for us in Detroit, we will go and
24 become American citizens".

25 MR. BINNING: You are raising
26 another issue but I would have to say, under
27 the present law that that would be called
28 an illegal strike.

29 THE COMMISSIONER: You might
30 say that for certain purposes in contemplation

1 of law there is a continuing strike but that
2 is all, you couldn't affect those individuals.

3 MR. BINNING: We could
4 prosecute them but ----

5 THE COMMISSIONER: Prosecute
6 them for going to Detroit and taking up a
7 new home?

8 MR. BINNING: We are not
9 prosecuting them for going to Detroit, we
10 are prosecuting them for acting in concert
11 and engaging in an illegal strike. Sir, at
12 some point I would have to argue it this way;
13 that that strike would have ended when it is
14 clear that the employees never intended to
15 return to that job.

16 THE COMMISSIONER: That is all
17 I am saying.

18 MR. BINNING: Then, I am in
19 agreement but I thought you were challenging
20 my remark that initially, even though they
21 terminated in the sense that they obtained
22 their books, and that is severing the employer-
23 employee relationship, there is no illegal
24 strike.

25 THE COMMISSIONER: It certainly
26 is a circumstance to be taken into account in
27 determining what their real intent was, but once
28 you have satisfactorily shown that their
29 intent is to clear out and sever ---

30 MR. BINNING: We are not

1 in disagreement but it is a matter of degree
2 and an illegal strike might start, it might
3 progress for six or seven weeks and maybe at
4 some point during that period there will be
5 evidence that clearly they do not intend to
6 return. I would say at that point there is
7 no illegal strike.

8 THE COMMISSIONER: That is all
9 I am suggesting, but it is a question of proof,
10 of course.

11 MR. BINNING: Let me go back
12 to this case because I have not underlined the
13 most important thing in that case. What happened
14 in the case was that Pigott finally gave in
15 to the pressure because nothing could be done
16 about it under the existing legislation and
17 nothing can be done today and agreed to the
18 National Joint Board award. 100 per cent of
19 the work was given to the sheet metalworkers.

20 MR. POLLOCK: Pigott, through
21 its agency, Crump?

22 MR. BINNING: Right, and through
23 its sub-contractor, Johns-Manville, who agreed
24 to that. As you know, pressures can be brought
25 so all of it was given to the sheet metalworkers
26 but you see, the sheet metalworkers didn't have
27 qualified people to install it. So what happened?
28 There had to be a deal made between the
29 carpenters and the sheet metalworkers. The
30 carpenters who formerly did the work were permitted

1 under temporary permit, to work for the sheet
2 metal. Now, to me, this is completely illogical
3 and that is what happens when the National
4 Joint Board makes an award on the basis of
5 American practice, which is not consistent
6 with Canadian practice.

7 THE COMMISSIONER: I think
8 that is a very strong reason for declaring
9 any award that conflicts with the award of
10 the board invalid.

11 MR. BINNING: Right. I know
12 that many people before you have heaped
13 criticism on the Ontario Jurisdictional
14 Commission when it existed and said they
15 were incompetent; I believe I read reports
16 to that effect. If they were they were not
17 in this case. Their award in this case
18 was right and I would dare anybody to challenge
19 it. But, I want to get onto my favourite
20 topic, and that is on the question of
21 jurisdictional disputes.

22 I feel that serious consideration
23 should be given to the elimination of the
24 craft concept, that there be no carpenters,
25 no bricklayers, no labourers, no cement masons,
26 no ironworkers on the construction side - I am
27 not talking about other work ---

28 THE COMMISSIONER: You really
29 are making an industrial organization.

30 MR. BINNING: Correct. I think

1 that serious thought should be given to this
2 rather than get into the complex, Mr. Pollock,
3 that you suggested of getting into joint councils.

4 Let me explain my point.

5 MR. POLLOCK: After the
6 explanation, I hope you will argue it.

7 MR. BINNING: I will. I gave
8 you the example of precast concrete, those
9 slabs in the City Hall. They are done by
10 labourers who went through a period of training
11 with each of these companies who erect this
12 type of thing.

13 THE COMMISSIONER: What was
14 involved in the training?

15 MR. BINNING: Just experience.

16 THE COMMISSIONER: That is all?

17 MR. BINNING: I think they
18 started on the inside and worked on the casting
19 in the moulds of these large concrete slabs.

20 THE COMMISSIONER: Did they have
21 anything to do, say, with the ingredients of
22 the mix?

23 MR. BINNING: They would learn
24 these things, yes, inside. The labourers
25 were trained and the labourers did it. Then,
26 three other unions claimed part of the work -
27 the cement masons, the bricklayers and the
28 ironworkers. They all claimed that part of
29 this work should be theirs.

30 MR. POLLOCK: On what basis

1 did the ironworkers call, the rods?

2 MR. BECIGNEUL: I think also
3 the rigging of them and putting them in place.

4 MR BINNING: I think the crane
5 operating engineers raised them but I think
6 the riggers placed them.

7 MR. POLLOCK: What are the
8 riggers?

9 MR. BINNING: They are the
10 ironworkers.

11 MR. POLLOCK: What about
12 the rod men, are they interested?

13 MR. BECIGNEUL: There are
14 no rods in the precasts.

15 MR. BINNING: To be interested
16 they would have to claim the work inside.
17 That would be their next step.

18 THE COMMISSIONER: Would they
19 not be reinforced?

20 MR. BECIGNEUL: I have not seen
21 any reinforcing in them.

22 MR. BINNING: I would think
23 there would be in the mould itself. They
24 would be poured in the vertical and probably
25 rods would be in there, I don't know, although
26 I would guess. I am not an engineer and know
27 very little about it. But what I am saying
28 is that three unions are claiming part of that
29 work but one person is performing all the
30 skills that these unions are claiming must

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1 be exercised. So I am suggesting - now this
2 is just the genesis of a new type of construction,
3 this is the beginning of a new era. I don't
4 know if you read it, there was an article in
5 the National Geographic on the development of
6 Siberia, the northland ---

7 MR. POLLOCK: You are not suggesting
8 we adopt the same method as Siberia, are you?

9 MR. BINNING: No, but in that
10 article it underscored the problem, that
11 Siberia is greatly developed in comparison to
12 our Arctic, but it explains the problem of
13 construction, the number of weeks they had
14 which were very few / ^{for} construction, the number
15 of problems they had with perma-frost which
16 goes down to 300 feet and so on, but certainly
17 the construction in our northland ---

18 THE COMMISSIONER: There was
19 an article on that which deals with that very
20 thing, the prefabricated houses they are
21 building for the Eskimos.

22 MR. BINNING: Yes.. This is only
23 a small craft but I can envision the day when
24 you will fit pieces of wall into other pieces
25 of wall with the electrical and mechanical
26 already built into it so that you will be
27 plugging in the whole works and the same with the
28 floor where you will be plugging in the whole
29 works and it will only become like the old
30 mini-brick type of construction at home.

1 THE COMMISSIONER: No electricians
2 on the job at all.

3 MR. BINNING: No. It will be
4 like mini-bricks. You remember those old
5 rubber things we used to put together? In this
6 way, a whole building might be built in this
7 way.

8 MR. POLLOCK: In the Commissioner's
9 day they were wooden.

10 MR. BINNING: I apologize for
11 that. You see, in that day, you should only
12 have one type of worker on that job and he is
13 going to have to have several skills and we
14 are suggesting now is the time to look ahead
15 and that surely should be an industrial situation
16 with one unit covering everybody on that job
17 site.

18 MR. POLLOCK: What you are
19 saying is that there ought to be in those
20 areas where there are similarities, amalgamation
21 of the presently existing unions.

22 MR. BINNING: Correct.

23 MR. BECIGNEUL: Interchangeability.

24 MR. POLLOCK: But you don't
25 have to go the whole route that you go which
26 makes it a pretty big and bitter pill to
27 accomplish.

28 MR. BINNING: Why not? I am
29 suggesting it as an aim.

30 MR. POLLOCK: I think that

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1 eventually, it will grow that way. As a matter
2 of fact it is growing that way in the industrial
3 area and it is growing that way, surely in some
4 of the construction.

5 THE COMMISSIONER: Take the
6 construction of these walls in the plant, what
7 about that organization?

8 MR. BINNING: That would be a
9 plant unit the same as it is in our precast, one
10 unit.

11 THE COMMISSIONER: There may
12 be different skills required.

13 MR. BINNING: Different classifications
14 but we are not going to run into the different
15 jurisdictional disputes that are now going on.

16 THE COMMISSIONER: It is a new
17 piece of work.

18 MR. BINNING: Right.

19 MR. POLLOCK: Perhaps what
20 you could do - and this is again a step in that
21 direction, I guess - under this scheme of
22 apportioning out jurisdiction is you could take
23 this into consideration and say, "All right,
24 your union, the carpenters, we will give you
25 this big chunk of stuff" ---

26 MR. BINNING: How are you going
27 to describe the chunk of stuff?

28 MR. POLLOCK: Putting up this
29 type of material. "And we will give the sheet
30 metalworkers the jurisdiction over the ceiling

1 tile and the carpenters aren't going to have
2 any problems, they are going to maintain a
3 certain amount of their employment for us
4 altogether so they don't disappear" and if
5 it is a question of having to readjust that
6 as technology advances, then it can be
7 adjusted.

8 THE COMMISSIONER: You have
9 to form a comprehensive and new craft.

10 MR. BINNING: Quite. To me
11 the first step would be to legislate the
12 craft concept out of the Act or if you don't
13 legislate it out of the Act, then somehow
14 direct the board to take such a factor into
15 consideration in new certificates because
16 I am speaking largely of new work and new
17 geographical areas.

18 THE COMMISSIONER: Won't you
19 have to have a new training in the places
20 of construction, of fabrication in the plant?
21 You would have to have men who know something
22 about electricity and who know something
23 about this, that and the other thing and,
24 therefore, you are creating a new complex of
25 skill, call it the mastercraft, or something
26 of that sort.

27 MR. HENNING: Right. I think
28 for example, I don't know how the precast
29 dispute is going to be finalized, but I feel
30 that we need it now, that precast really should

1 be an industrial described unit. It should
2 be an all-employee unit and the Board should
3 so order in a precast dispute but the Board
4 would never order it. If this went to the
5 Board, the Board would not order it.

6 MR. POLLOCK: It is certainly
7 not tactically feasible at this stage of
8 development, is it?

9 MR. BINNING: I think it is.

10 MR. POLLOCK: To wipe out
11 craft distinctions?

12 MR. BINNING: No, I think
13 we would have to have a new concept with the
14 idea that eventually the craft concept will
15 disappear.

16 MR. POLLOCK: What is the
17 difference, if you create a new one that the
18 carpenters union becomes the bargaining agent
19 for that group of people.

20 MR. BINNING: I don't care what
21 unit it is provided that the unit is an
22 all-employee unit.

23 MR. POLLOCK: What does that
24 mean?

25 MR. BINNING: It means this,
26 that the carpenters, providing they have the
27 jurisdiction in their constitution, which they
28 have, it would be the same - I don't know
29 whether you call them carpenters or bricklayers,
30 you might as well call them the steelworkers

1 or the autoworkers.

2 THE COMMISSIONER: You would
3 have to have new competency in the factory, in
4 the industry.

5 MR. BINNING: Correct.

6 THE COMMISSIONER: Therefore,
7 it would not be carpenters at all. He would
8 be required to know something about carpentry
9 but he would have to know something about
10 electricity and, therefore, it is a composite
11 skill that is required that you have in mind.

12 MR. BINNING: Right. Mr.
13 Pollock said, I think, "Take the carpenters'
14 union". I don't care but I think the procedure
15 should be that these men should be trained
16 as they were in the precast by the companies
17 and then one union, I don't care what you
18 call them, it could be any union at all, I am
19 not saying we should select unions providing
20 they can properly represent these men, but
21 then one union should apply for that whole
22 unit. I don't think it should be divided up
23 and the way it is going now, the Board would
24 divide it up.

25 MR. POLLOCK: Apply for the
26 whole unit of ---

27 MR. BINNING: ... all precast
28 workers.

29 MR. POLLOCK: Right from the
30 fellow who is pouring in the plant to the fellow

1 who would put it on the job.

2 MR. BINNING: Well, it could be
3 that too, certainly, or it could be an outside
4 installing group which could be separate.
5 Perhaps it will get to the point.

6 MR. POLLOCK: You have got that
7 to some extent. You can provide for that now
8 on a sub-contracting basis. You would run into
9 difficulties, of course, this is the route of
10 some of the jurisdictional disputes that
11 if you came to the International Brotherhood
12 of Electrical Workers initially and said, "All
13 right, you are going to do all the on site
14 installation except this work which we are
15 going to contract out to Canadian General
16 Electric", they wouldn't buy that.

17 MR. BINNING: Right.

18 MR. POLLOCK: But if they
19 would buy it, then you would have exactly
20 what you are doing because the U.E. people
21 from General Electric would come in and put
22 the whole thing together.

23 MR. BINNING: Right. There
24 are several problems now, for example, with
25 the I.B.E.W. For example, some companies
26 have made special electrical units. They are
27 factory made, they have been delivered to the
28 site and, of course, the I.B.E.W. have all
29 the jurisdiction on electrical work on the
30 site. The I.B.E.W. refuses to install that

1 particular thing because they say, "Some of
2 that work was ours". So what do they have
3 to do? They tear down that machine on the job
4 site and reconstruct it and then put it in.

5 MR. POLLOCK: Unless you narrow
6 that wide jurisdiction that they have under
7 the collective agreement, you negotiate with
8 them.

9 MR. BINNING: Right and you
10 can't do it.

11 MR. POLLOCK: Theoretically,
12 you can, it is a bargainable item.

13 MR. BINNING: It is a strike
14 item and would last forever. We have never
15 been successful in narrowing the jurisdiction
16 of a union in negotiation. We have enough
17 trouble just keeping them the way they are.

18 THE COMMISSIONER: You will
19 have to wait until mortality brings about
20 its effect.

21 MR. BINNING: I know you smile
22 when you say eliminate the craft concepts but
23 I think it is no more far-reaching than
24 suggesting a tribunal.

25 MR. POLLOCK: That idea would
26 not sit well with Mr. Meany.

27 MR. BINNING: I don't doubt that.
28 In fact I would think you would have more
29 trouble close to home, we don't even have to
30 go that far.

1 MR. POLLOCK: I am sure that
2 is true.

3 MR. BINNING: If things go the
4 way they are going now, and if you want any
5 indication of how it is going to go, you just
6 have to look at the United States and some of
7 the funniest stories, you hardly believe what
8 goes on in this question of jurisdiction down
9 there. An electrician will not touch a piece
10 of wood and you have to phone the carpenters
11 and the electrician will stand around for four
12 hours while a carpenter has to come from somewhere
13 in New York which takes some time and remove
14 that piece of board within five minutes, which
15 I could have done with no experience at all.
16 But that is exactly where we are going and I
17 think it is the type of problem that does not
18 require what you are saying, let's talk a little
19 more about it, because we talk so much in this
20 industry to try to solve problems and get
21 nowhere that you get sick and tired of talking.
22 you get sick and tired of committees.

23 MR. POLLOCK: I am not saying just
24 let's talk about it and if we can't agree we will
25 all go home. I think you have to talk about it
26 and have somebody there in a position to say,
27 "All right, we have had enough talk, unless we
28 can come to an agreement, I am going to decide it!"

29 MR. BINNING: Right. I suggest
30 to you that the basic problem lies in the Ontario

1 Labour Relations Board, as far as Ontario is
2 concerned. I am only speaking for this area.
3 It lies in the craft concept as it has developed
4 under their decisions.

5 MR. POLLOCK: Don't you think
6 that the unions are aware of the problems and
7 that there is some animosity between the union
8 that gets awarded this jurisdiction and the one
9 who isn't and that this present conference
10 being carried on, long overdue into the structure
11 of the Canadian labour movement, has not got
12 that at the top of their list, not only on the
13 craft area but, as a first step at least, in the
14 industrial area where there is this wasteful
15 competition. Perhaps they can resolve some
16 of these problems internally, considerably easier
17 than anybody could sit down from the outside
18 and impose it upon them.

19 MR. BINNING: What I am saying
20 to you is that this problem relates to the
21 appropriateness of a bargaining unit which is
22 something within the jurisdiction of the Labour
23 Relations Boards throughout the country. I
24 think it can be attacked here and I think it
25 should be attacked here and it should be
26 studied here and there should be legislation
27 on it. If you leave it to the unions and
28 the employers, all you will do is you will
29 create more inefficiency, you will get peace
30 but the peace will be very costly.

1 THE COMMISSIONER: Well, doesn't
2 it amount to this, that you are really, for
3 the present at least, cutting down on the
4 demand for strictly carpenter work and strictly
5 electrical work?

6 MR. BINNING: Exactly.

7 THE COMMISSIONER: And, therefore,
8 the first thing to do would be to put a stop
9 to the general recruitment or apprenticeship,
10 you might say, in carpentry work in these
11 individuals because you are gradually closing
12 the area in which they will continue. They
13 will continue, perhaps, indefinitely to be
14 in demand, but you are building up a new
15 craft in which your training must be more
16 generalized, it must embrace a wider range
17 than a mere carpenter and a mere this, that
18 or another thing will do, and you have to
19 conceive that now as something that will be
20 needed in a hurry.

21 MR. BINNING: Right.

22 THE COMMISSIONER: I think that
23 is a pretty good idea.

24 MR. BINNING: Because what
25 you are doing, I think, is with this new craft
26 you are imposing upon it an archaic division
27 of labour.

28 THE COMMISSIONER: Certainly.
29 The only thing is it is really much the same
30 as what is happening in other places where you

1 are introducing new machines or a new something
2 else. You are getting rid. Some carpenters,
3 say, can be trained for this. They will be
4 transferred from one group to the other.
5 Others will remain, they may be too old for
6 that but there will be some demand for a
7 continuing carpentry work with reduced demand,
8 with reduction in the number and available
9 work, but I think what you really are asking
10 for is the preparation of men who will treat
11 that work as a unit of work.

12 MR. BINNING: Right, and also
13 putting that man in a labour relations'
14 environment, I want one unit composed of all
15 these men and I say to you, that there is an
16 example, we don't have to look to the future,
17 but the precast industry provides us with an
18 example for study and for the beginning of
19 this new concept. I am not asking you to
20 look into the future, although I suggest we
21 had better or we are going to perish, we will
22 never open the northland; I am suggesting
23 that there is something presently with us
24 that we could begin to build for the future
25 on and it is of present concern.

26 THE COMMISSIONER: You are
27 really advancing something extraordinary,
28 getting rid of the absurd.

29 MR. BINNING: That is right.
30 That is one other point that we wanted to make.

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1 I don't want to keep you too long ---

2 THE COMMISSIONER: We are here
3 to listen to you.

4 MR. POLLOCK: You can have the
5 whole day, if you last past five o'clock we will
6 adjourn.

7 MR. BINNING: I think we covered
8 the first two points we made. We want you
9 to keep in mind that under the present set-up
10 we must have a balance of power between
11 employers on the one side, unions on the other
12 side, with a proper consideration for the
13 public interest. We are not disputing that
14 but our main concern is that there be a balance
15 between the unions and the employers. We feel
16 that this should always be kept in mind in
17 regard to any recommendations that are made.
18 That is really our first point. We would
19 suggest to you that right now, we feel perhaps
20 we are a little short on power but yet, we are
21 hopeful that this round of negotiations,
22 we are hopeful now that we are in such an
23 equality of power during these negotiations.
24 We certainly weren't in the last one. We
25 are hopeful that this year we have persuaded
26 a sufficient number of people to support us
27 to the extent that they can so that we won't
28 be faced with full employment while we are
29 on strike, while we have been struck. So
30 we think that maybe we have the balance this

1 year but we don't know.

2 THE COMMISSIONER: I suppose
3 you would agree to this, that a contest between
4 an employer and his employee should, so far
5 as possible, be confined to those two groups?

6 MR. BINNING: With some
7 limitations as I mentioned to you before. To
8 what extent will the employees who are on
9 strike be supported with funds from other
10 sources other than their own.

11 THE COMMISSIONER: That is a
12 factor, yes, and in Australia and certainly
13 in some jurisdictions they don't allow any
14 strike relief. It is against the law. They
15 sometimes get around it by saying it is
16 relief from poverty or something of that
17 sort but strictly speaking they must account
18 for the payments out of their union funds.

19 MR. BINNING: Right. Having
20 that in mind and also having in mind certainly
21 that all employers - I think the point you
22 were going to raise was that when you are
23 talking about association, you are talking
24 about multiple employers - that all employers
25 be in the same position?

26 THE COMMISSIONER: Yes, that
27 is what you say, "We should not have our
28 associates enabling a strike to be maintained
29 against us".

30 MR. BINNING: Right. So that

1 I think is our first point.

2 Our second point is this craft
3 concept.

4 MR. POLLOCK: On the first
5 point you say you ought to maintain this
6 balance. Balance of what - balance of
7 strength? Now, what goes to the strength -
8 money, economic factors, the existence of a
9 labour force, the availability of mortgage money,
10 the size of the employer? How do you adjust
11 all those?

12 MR. BINNING: It depends what
13 your concept is of the purpose of collective
14 bargaining. I think it is our concept that
15 both parties go to the table and it is the
16 employer's job on the one part to make the
17 working conditions as inexpensive as possible,
18 to maintain as many of the rights that he
19 formerly maintained, to even try to obtain
20 new rights in regard to the employees.

21 THE COMMISSIONER: Now, in what
22 real interest would you say that was, in his
23 own private interest?

24 MR. BINNING: In his own private
25 interest, but let me finish and then perhaps
26 you can disagree with me. When you go to
27 the bargaining table, that is your job from
28 the employer's standpoint. On the other
29 hand, the union's job is to get as many
30 financial benefits as possible for the employees

1 to give the employees as many rights as it
2 can in the employment situation, which means
3 to take those rights away from management and
4 give him as much security as possible; in
5 other words, that would be part of his control
6 over the situation. Now, I conceive of the
7 both parties sitting down with those
8 alternate jobs. The purpose of collective
9 bargaining is to find out on the one hand
10 how much money the employers are willing to
11 give away and the rights that they are willing
12 to give up and, on the other hand, it is
13 the union's - it is the employer's job to
14 find out how much money the unions will accept,
15 rather than go on strike in regard to money and
16 in regard to the giving up of rights. It is
17 a poker game, really. It is really to find
18 out how serious someone is in regard to the
19 different issues that are on the table.

20 MR. POLLOCK: It is brinkmanship,
21 is it?

22 MR. BINNING: It is, that
23 word has been used about 100 times in the
24 last two weeks.

25 THE COMMISSIONER: I think that
26 is the trouble with it because it strikes me
27 you can argue very strongly that that is at
28 the root of a great deal of the difficulty,
29 the attitude that you take towards the interest
30 of each one and how it will be effected. If

1 they look upon themselves not as little lords
2 of the universe, they are in possession of
3 the castle, like the Dukes of Normandy 2000
4 years ago, sitting there and resisting assaults,
5 well, of course, that is the attitude. It
6 would be a sort of case of lockjaw on both
7 sides, nobody saying anything, just waiting
8 to see how long the waiting could continue.
9 But if you look upon yourself as being really
10 the people who depend upon the community for
11 the very privilege of carrying on their
12 business, whose benefit depends upon the
13 acceptability to the community of their
14 performance as citizens, then you will see
15 that there are other elements than mere bank
16 deposits and bank books to take into account.
17 I think, surely, without affecting in the
18 slightest the fundamental conception of private
19 industry, that it has come today to be under
20 a duty to its society, not merely a privilege
21 to society. They say, "We will come in or
22 go out as we please" but in the meantime they
23 have helped to form the apparatus and the
24 structure of the society which protects them.
25 Why shouldn't they take that into account
26 too and try to determine the acceptability to
27 that society of the action in which they
28 participate?

29 MR. BINNING: I agree with you,
30 I am not arguing that point. Really, what I

1 am trying to convey to you is what really
2 happens.

3 THE COMMISSIONER: I agree
4 but I would say that the only modification
5 that will be made there is when that is
6 induced by a change of attitude.

7 MR. BINNING: But I would
8 say this, sir, and I am getting into the economic
9 field, perhaps, where I am not very well
10 qualified but I would agree with you that
11 the rights of property only exist because of
12 the community. They are created by the
13 community.

14 THE COMMISSIONER: Of course,
15 they are.

16 MR. BINNING: There is no
17 absolute right to property, I agree 100 per
18 cent.

19 THE COMMISSIONER: You are quite
20 right, although that fact is very often
21 forgotten.

22 MR. BINNING: I realize that.
23 Now, it became clear in the depression, if
24 I understand the depression properly. I was
25 not around.

26 MR. POLLOCK: It is heresay
27 and inadmissible.

28 THE COMMISSIONER: This is
29 something the court takes judicial notice
30 of.

1 MR. BINNING: It was proved
2 beyond the shadow of a doubt that free
3 enterprise, as such, could not exist without
4 controls. I think that became evident.

5 Now, after that legislation
6 was passed and it has continued to be passed
7 to control free enterprise, but I tell you
8 that the existing legislation which we must
9 say is the result of the community - they
10 elected the people who passed the laws and
11 the people whom they elect are supposed to
12 look after the public interest - that legislation
13 has produced the type of bargaining that I
14 just described to you. Would you agree with
15 me?

16 THE COMMISSIONER: I daresay
17 that is so. I would not challenge that.

18 MR. BINNING: The way I
19 described it to you ---

20 THE COMMISSIONER: Although
21 there are indications that modify that. There
22 are two particular provisions in the Act that
23 show that. In the first place, there is the
24 compulsion on the employer to bargain in
25 good faith. Now, that is a tremendous factor.

26 MR. BINNING: Good faith in
27 what respect?

28 THE COMMISSIONER: I am
29 concerned with the general. It may be a
30 fuzzy idea, but it is an idea of being honest

1 in your protestations of this, that and the other.
2 So that, to me, is a tremendous change in
3 the point of view in which these things are
4 looked at and the second one, that the person
5 on strike continues his status as an employee.
6 I don't think that fact has been sufficiently
7 appreciated.

8 MR. BINNING: Correct.

9 THE COMMISSIONER: He is an
10 employee, he has ceased to work but that does
11 not affect the validity or the continuity of
12 his relation.

13 MR. BINNING: Right.

14 THE COMMISSIONER: When you
15 take those two factors alone - and there are
16 other provisions that have less impact, I think,
17 than that - they give the direction of the
18 legislative outlook.

19 MR. BINNING: We have discussed
20 before, and it was all for this reason, the
21 position of the employee in the construction
22 industry. There really is no employer-employee
23 relationship.

24 THE COMMISSIONER: I agree
25 that you have special conditions underlying
26 this particular branch of activity.

27 MR. BINNING: And the legislation
28 has never considered that factor. As a result
29 we end up in bargaining with nothing more
30 glamorous than a straight poker game.

1 THE COMMISSIONER: Although,
2 in fact, you are one of the most important
3 of all of the employee agencies.

4 MR. BINNING: This is correct.

5 THE COMMISSIONER: The greatest
6 problem here today is housing. That, in one
7 sense, includes you.

8 MR. BINNING: It is very
9 important to us but, as I tell you, the public,
10 if I might use this phrase, has gotten what
11 they asked for. You may disagree with me
12 but, what they legislated for, they have
13 not received.

14 THE COMMISSIONER: You may be
15 quite right about that.

16 MR. BINNING: Because that,
17 in actual fact, is what happens when we sit
18 at the bargaining table. I am not understating
19 it for a moment.

20 THE COMMISSIONER: What you
21 tell me, I have no doubt is what actually
22 takes place.

23 MR. BINNING: Because in an
24 industrial situation, to distinguish between
25 the two, many employers still have a fatherly
26 attitude towards their employees. They are
27 concerned about the benefits of their
28 employees and often they will consent to
29 provisions, not because they are asking for
30 them, not because they are afraid there will

1 be a strike because of them, but because they
2 feel this is reasonable. I think this is
3 what you are asking for.

4 THE COMMISSIONER: I am glad
5 to hear you say that, because I am quite
6 sure that there must be some employers who
7 are influenced by factors of that sort.

8 MR. BINNING: Oh, there are.
9 But in the construction industry, there are
10 practically none, because of the situation,
11 to be honest with you.

12 MR. POLLOCK: Perhaps there
13 are some of those employers who have that
14 attitude and will quickly change their
15 mind when there is a union certified for them.

16 MR. BINNING: I must say,
17 though, there are situations, and I think it
18 only applies to smaller employers in the
19 construction field, where they actually have
20 men on salary, which is a unique type of thing.
21 This is where this reasonableness still does
22 exist but it is very rare. The industry
23 doesn't lend itself to that type of thing
24 and it hasn't to the present time.

25 MR. POLLOCK: You would say
26 that inherent in the collective bargaining
27 processes is the adversary system?

28 MR. BINNING: No doubt, as
29 far as construction is concerned. Let me
30 limit it to construction because there are other

1 areas where often you sit down and you negotiate
2 a contract in an atmosphere of what is reasonable
3 and what is proper and what is in the best
4 interest to both parties. There are many
5 contracts negotiated that way. I often sit
6 down with exactly that in mind but in the
7 construction industry there is almost a
8 complete absence of it to be honest with you.

9 MR. POLLOCK: So as long as
10 this type of legislation and this type of
11 collective bargaining is the acceptable
12 technique, as far as the legislation is
13 concerned, the adversary system is with us.

14 MR. BINNING: Right.

15 MR. POLLOCK And that is,
16 "I will give you as much as you can get and
17 I will take as much as I can".

18 MR. BINNING: And if that
19 situation is not to continue, we require
20 the balance of power I was talking about. Let
21 me give you an example: During the last
22 negotiation the union said they wanted \$1.50
23 or \$2, some ridiculous figure like that.
24 We said, "Why do you want a figure like that?".
25 They thought about it for a minute and they
26 made some statements and finally they said,
27 "Well, we want it because we want it". It
28 is no joy bargaining in that situation -
29 they want it because they want it. That is
30 exactly what we are faced with. It is

1 brinkmanship. It is only a struggle for power
2 when you really get down to it.

3 THE COMMISSIONER: In that
4 sense, it has lost its sense of responsibility
5 because we are all responsible to some degree.

6 MR. BINNING: That is right,
7 that is why the rates are very expensive
8 in the construction industry. The industry
9 talks about nickels and in the construction
10 industry you talk about quarters. Rates
11 are very expensive. For the amount of
12 skill that they exercise on the jobs site
13 and then go into a factory and see the skill
14 that is being exercised there at half the
15 price, you begin to wonder.

16 THE COMMISSIONER: Have you
17 ever attempted to estimate the proportion of
18 cost in, take a home, that can be traced to
19 labour costs?

20 MR. BINNING: I will ask Mr.
21 Becigneul.

22 MR. BECIGNEUL: Do you mean
23 what percentage of labour contents in a home?

24 THE COMMISSIONER: The total
25 cost today of the construction of a residence.

26 MR. BECIGNEUL: I couldn't
27 give you a guess because actually a lot of
28 the homes are prefabricated in shops.

29 THE COMMISSIONER: I mean,
30 but to trace that right down.

1 MR. BECIGNEUL: I would say
2 40 per cent or 35.

3 MR. BINNING: 35 or 40 per cent.

4 MR. BECIGNEUL: That would
5 be rough.

6 MR. BINNING: Our greatest
7 problem in negotiation, money is the only
8 problem really, is that the tenders that
9 have been accepted, the contracts that have
10 been entered into, will overlap the end
11 of a contract and commencement of a new one;
12 in other words, a contractor, when he tenders
13 on a contract, if it is towards the end of
14 a collective agreement will have to anticipate
15 and build into his tender the amount of any
16 increase.

17 THE COMMISSIONER: It is a
18 day-to-day thing?

19 MR. BINNING: Right. They don't
20 look in terms of the total cost of a building.

21 THE COMMISSIONER: But the
22 purchaser does.

23 MR. BINNING: That is right,
24 that is the public interest.

25 THE COMMISSIONER: And how
26 young people today can establish a home
27 puzzles me.

28 MR. BINNING: To be honest
29 with you, we don't negotiate either with this
30 in mind and that is why we have never analysed it.

1 All we can see is that our people anticipated
2 X number of cents increase in building in
3 their tenders for many millions of dollars.

4 THE COMMISSIONER: So, really
5 you exclude the question of the community's
6 interest in housing, I mean from the point
7 of view of the purchaser.

8 MR. BINNING: We don't
9 specifically exclude it but in actual fact
10 that might be what we are doing.

11 THE COMMISSIONER: You agree
12 with the workers. You say, "Yes, we will do
13 that" but you will simply pass the bill on to
14 the person who is buying the house, whoever it
15 may be.

16 MR. BINNING: That is what
17 you end up doing. Your main concern is in
18 this contract that overlaps because you know,
19 as an employer that whatever you give, everybody
20 else is going to have to pick up anyway so
21 you don't have to worry about that aspect of
22 it. I would not say we excluded the public,
23 you might say that.

24 MR. POLLOCK: It is not your
25 intention to do it.

26 MR. BINNING: It is not our
27 intention to do it.

28 THE COMMISSIONER: You never
29 pay any regard to it. I don't criticize it.

30 MR. BINNING: To the extent that

1 we do, there is a sense of maintaining the cost
2 as low as possible. We are doing it for our
3 own good but not for the public good, I would
4 agree with you. That is our intent.

5 MR. POLLOCK: In some cases
6 it happens to be the same.

7 MR. BINNING: Right. I would
8 think it is the same.

/FJN 9 MR. BECIGNEUL: I think it
10 should be pointed out in the area we deal with,
11 the heavy construction and commercial, there
12 is actually no passing it on to the public,
13 so to speak, because most of the contracts
14 are what you call fixed price contracts or
15 for lump sum bidding on the job. I imagine
16 the man in his tender, if he has got a project
17 running, say, for four years, would take all
18 the factors into consideration, the cost of
19 living index and what have you and he would put
20 a figure on there to project but then if he
21 is faced with an increase of 50 or 55 per cent,
22 he can't pass it on, nor can he pay it. That
23 is where the struggle comes in.

24 MR. BINNING: There is also
25 another area too, that we are very conscious
26 of, and that is that in Toronto or Ontario, for
27 that matter, they compete for free world
28 capital, if I may use that term; in other
29 words, I think we mentioned in our letter to
30 you that where a company in the United States

1 has capital money to expend and they want to
2 expand their operations somewhere in the world -
3 there are factors all over the place - it
4 does become a factor as to how much it is going
5 to cost them to add, to increase their present
6 facilities in Ontario. It becomes a factor
7 of how much it is going to cost in construction.
8 We are aware of this and we are attempting to
9 keep our labour costs low so that we can get
10 part of that work. Now, to that extent it
11 is in the public interest.

12 MR. POLLOCK: It attracts
13 industry.

14 MR. BINNING: Right, we are
15 aware of that. To that extent our interest
16 and the public interest are one and the same.

17 MR. POLLOCK: Of course, the
18 construction industry doesn't suffer from
19 some things that other industry suffers from,
20 like a run-away shop. You can't build a
21 Toronto-Dominion centre in Montreal and then
22 bring it to Toronto.

23 MR. BINNING: You might. Well,
24 with a name like Toronto-Dominion, they couldn't
25 very well have a head office in Montreal,
26 but let us take the Canadian Imperial Bank of
27 Commerce ---

28 MR. POLLOCK: You could.
29 So far as competing on the individual locality
30 basis, you are competing with people at the

1 same time.

2 MR. BINNING: Right, you are
3 eliminating that competition but we are
4 conscious of competition from other areas
5 and other countries and we do seek to keep
6 our costs at a minimum for that purpose.

7 THE COMMISSIONER: Oh, yes,
8 I noticed in London in this province you have
9 contractors building post offices from London
10 in Moncton.

11 MR. BINNING: As I say, we
12 are conscious of it.

13 Just the other two points, and
14 I will be very brief. That is the area I
15 talk about when I speak about balance. We
16 don't know, but we feel that perhaps the quality
17 of craftsmen is not being acknowledged as
18 it should in the construction industry. We
19 feel that a good carpenter and a bad carpenter
20 receive the same compensation and receive the
21 same treatment. Not only that but, in fact,
22 a good carpenter will be encouraged not to
23 be as good as he is. Whether this is something
24 that can be solved, I don't know. Maybe we
25 are trying to turn back the clock.

26 THE COMMISSIONER: Oh, yes,
27 there is a sort of equalization that permeates.

28 MR. BINNING: We are asking
29 that this not be encouraged. Whether it
30 will have any effect on you, I don't know.

1 Boredom is perhaps to us the greatest problem.
2 Boredom is largely caused, I think, due to
3 the fact that people no longer take pride
4 in their work. We have helped to create that,
5 the public has helped to create it. We just
6 thought we would mention. The more we
7 thought the more we figured that a person
8 really who is getting a raw deal is a good
9 carpenter.

10 THE COMMISSIONER: That is
11 something I can understand. He was a man
12 who had retained a sense of the artistic in
13 his work.

14 MR. POLLOCK: There is the
15 incentive that if he is a good carpenter he
16 will be continued on in permanent employment.
17 There is the incentive to a good carpenter
18 that perhaps he may be one of the few who
19 may be continued on salary. There are those
20 incentives open to the good craftsman that could
21 be and are arranged for by the employer in
22 recognition of that skill.

23 MR. BINNING: This is part of
24 it but I think there should be more of that.
25 For example, there are also people who are
26 qualified to do work who are not permitted
27 to join the unions. Take for example, we
28 have situations here in Toronto where we have
29 asked, for example, for rod men. The union
30 has been unable to supply them - this was during

1 full employment - so what you will do, you will
2 hire off the street and the union gives them
3 a temporary permit, it doesn't take long for him
4 to acquire the skill of a rod man (it is not
5 a very skilled craft) and then he becomes as
6 skilled as anybody else but they will not make
7 him a full member, they will continue him on
8 a work permit because when it gets down to a
9 slow period he is the first guy that goes
10 because he is not a member.

11 THE COMMISSIONER: We have had
12 two or three representations to that effect.

13 MR. BINNING: Not only that
14 but bricklayers ---

15 MR. POLLOCK: That is the
16 seniority system of the craft union.

17 MR. BINNING: More than that,
18 it is actually denying a man membership in
19 an area where he requires membership and this
20 is the type of thing that we detest strongly
21 in regard to public institutions. I am thankful
22 that the Supreme Court of Canada did uphold
23 a decision of the Court of Appeal of Ontario
24 that it is improper and that was when the City
25 of Toronto, Metropolitan Toronto, attempted
26 to put in their road tenders that anybody
27 bidding on these tenders would have to be
28 affiliated with a trade union, had to have
29 a collective agreement with a trade union who
30 was affiliated with a Toronto and District Building

1 Trades Council. Those unions are the very unions
2 that deny membership to a man so if a man wants
3 to work in this area, it can be denied him on a
4 public building. That was challenged in the
5 court and upheld, but there is still a by-law
6 on the books for the City of Toronto with
7 the same provision in which they apply. To
8 me this is a most improper type of thing, it
9 is discrimination of the worst kind. But
10 that exists and I don't think there is sufficient
11 protection for the individual. I think the
12 individual has been largely forgotten in labour
13 relations other than the discrimination
14 provision.

15 THE COMMISSIONER: In some
16 respects and to some extent I think that is so.

17 MR. BINNING: I think this
18 would be one factor I would ask you to take
19 into consideration.

20 The last point really, is I think
21 there should be a serious look at the methods
22 provided in the Labour Relations Act for
23 enforcement of the provisions. For example,
24 on an illegal strike, aside from the provisions
25 in any collective agreement for the collection
26 of damages, which are always difficult to
27 prove, you have the procedure for a declaration
28 of an illegal strike and you have a procedure
29 for consent to prosecute. The Board itself,
30 in its policy, treats those two provisions as

1 a method of getting the people back to work.
2 They are not concerned with the fact that
3 an illegal strike has taken place. The
4 Board is really not concerned with that; their
5 main concern is to get the men back to work.

6 MR. POLLOCK: Isn't that the
7 concern of everybody?

8 MR. BINNING: That is the
9 initial concern but still the fact remains
10 it does nothing to deter people from engaging
11 in an illegal strike one week later.

12 THE COMMISSIONER: There is
13 no doubt it has a tendency for everybody to
14 treat these provisions with contempt.

15 MR. BINNING: Not so much
16 "contempt".

17 THE COMMISSIONER: If there is
18 no prosecution, if the whole thing is washed
19 up at the end, then they begin to feel, "We can
20 do this, we can wipe it out".

21 MR. BINNING: The procedure
22 itself, I think could be changed, sir. They
23 have to go to magistrate's court after going
24 through three steps and having a lawyer present
25 at all three steps is a very costly business.

26 THE COMMISSIONER: They won't
27 allow you a permit to prosecute until you
28 first get a declaration, for instance, that
29 a strike is illegal?

30 MR. BINNING: You can go directly

1 to an application for consent but if the strike
2 is continuing, you normally go to the declaration.
3 We always file applications for declarations
4 and consent to prosecute at the same time,
5 that is our normal practice, but the Board
6 will schedule the declaration on a short notice
7 basis and then will schedule the consent to
8 prosecute two weeks later or something.

9 THE COMMISSIONER: Why couldn't
10 they decide the whole thing in one hearing?

11 MR. BINNING: I don't know
12 why they couldn't, to be honest with you, I
13 don't know. Another thing that discourages me
14 is that on the application for a declaration
15 of a legal strike, the Board may rule that it
16 is an illegal strike but you have to prove
17 it again when you get the consent.

18 THE COMMISSIONER: What do
19 you think of that?

20 MR. BINNING: It is wrong,
21 absolutely wrong. There is no reason why
22 the Board couldn't issue the declaration
23 and grant the consent at the same time.

24 THE COMMISSIONER: Well, of
25 course, and then it would then go to the courts
26 on the basis of the legality.

27 MR. BINNING: I am wondering
28 why the Board would not have the power to
29 penalize. They have the power to penalize
30 against employers. That is largely overlooked.

1 If you prove that a man was discharged or
2 dealt with contrary to section 65, the Board
3 can rule that you have to pay him all his
4 back wages. So that is a penalty.

5 MR. POLLOCK: Does it fine you?

6 MR. BINNING: No.

7 MR. POLLOCK: It is not a
8 penalty, but if it finds you have not done
9 something ---

10 THE COMMISSIONER: You are
11 in violation of the agreement.

12 MR. POLLOCK: That is right,
13 it is your own fault.

14 MR. BINNING: There is no
15 agreement in most cases.

16 THE COMMISSIONER: If there
17 is no agreement - what do you mean there
18 is no agreement?

19 MR. BINNING: Usually section
20 65 cases arise during an organizational
21 campaign. They usually don't arise during
22 the currency of an agreement.

23 THE COMMISSIONER: But can't
24 they arise?

25 MR. BINNING: They can but
26 you usually proceed under the collective
27 agreement.

28 THE COMMISSIONER: You mean
29 in the recognition demand where they picket
30 or do something?

1 MR. BINNING: No, for example,
2 let us say the Steel Company goes into a
3 plant ---

4 MR. POLLOCK: When an employer
5 discharges someone who is doing the organizing.

6 MR. BINNING: Yes, section 65.
7 If it was, the Board will reinstate him and
8 order back wages which, in a sense, is a
9 penalty. Any way you call it, it is a
10 penalty, as far as I am concerned. The
11 employer is penalized for having discharged
12 him and having to repay him for all his lost
13 work.

14 MR. POLLOCK: He is not
15 penalized in the sense that he has done something
16 that is wrong: All he is doing is saying
17 if you had known that that was wrong, you would
18 not have done it.

19 THE COMMISSIONER: You mean
20 the employer has done that?

21 MR. BINNING: Yes. So I am
22 suggesting that perhaps you could look at that.
23 Also the jurisdictional dispute thing should
24 be looked at again because of its ineffectiveness
25 to solve the Toronto-Dominion situation.

26 Basically, those are our main
27 comments. I hope we haven't kept you too long.

28 MR. POLLOCK: It has been
29 suggested that as far as the enforcement
30 procedures are concerned, there ought to be

1 a branch of the Department of Labour concerned
2 with the enforcement after the initial stages
3 of the employer to get a declaration that
4 there has been an unlawful strike, similar
5 to the National Labour Relations Board in
6 the United States where they have an executive
7 and enforcement branch, administrative and
8 enforcement, that once the employer has
9 got to get the declaration, then the enforcement
10 is up to the Board or up to the Department
11 of Labour, they will have somebody to go and
12 proceed with the case through the magistrate's
13 court. What do you think about that set-up?

14 MR. BINNING: That gets
15 around our main problem because, to be honest
16 with you, in advising clients, how can you
17 advise them to take three steps when it is
18 going to cost them - I don't know, we were
19 on an application for a declaration of illegal
20 strike, I think last fall. I think I was
21 six days, five or six days before the Board.

22 MR. POLLOCK: I suppose it
23 is difficult for Pigott Construction to qualify
24 for legal aid?

25 MR. BINNING: That is right,
26 it would be quite hard.

27 THE COMMISSIONER: Take an
28 illegal strike, under what circumstances does
29 it arise except during the currency of an
30 agreement?

1 MR. BINNING: You are right, it
2 only arises that way.

3 THE COMMISSIONER: What is
4 the complexity there that would take very long
5 to decide?

6 MR. BINNING: Proving of damages.

7 THE COMMISSIONER: But to get
8 the declaration of illegality?

9 MR. BINNING: Well, we had
10 a five-day hearing.

11 THE COMMISSIONER: Well, what
12 was involved?

13 MR. BINNING: Safety, they
14 argued that the men left even though ---

15 THE COMMISSIONER: But that
16 is no excuse for a strike during the agreement,
17 is it?

18 MR. BINNING: The Board said
19 it might be. We got the declaration because
20 they upheld the safety argument that it was
21 not proven there was any safety.

22 THE COMMISSIONER: I thought
23 the Act was very clear that during the
24 continuance of a contract you cannot strike.

25 MR. BINNING: I argued that
26 but they didn't see fit to accept that argument.

27 THE COMMISSIONER: Under what
28 circumstances can you strike illegally?

29 MR. BINNING: They said if
30 the men reasonably believed they were working

1 under unsafe conditions, then they could act
2 in concert and engage in a strike.

3 MR. BECIGNEUL: Sir, we have
4 strikes today in Toronto on safety matters.

5 THE COMMISSIONER: It is not
6 technically a strike, where a strike is
7 positively forbidden?

8 MR. BINNING: It is acting in
9 concert really.

10 MR. POLLOCK: I quarrel with
11 your suggestion that the only time you can
12 have an illegal strike is during the currency
13 of an agreement.

14 MR. BINNING: No, I did not
15 say that, I said that was the usual situation.
16 You can have illegal strikes without that.

17 MR. POLLOCK: Isn't the effect
18 of section 54 (2) to make any concerted
19 cessation of work illegal unless there has
20 been a certification or a voluntary recognition?

21 MR. BINNING: Right.

22 MR. POLLOCK: Those were the
23 two situations in which you can have a
24 conciliation officer appointed?

25 MR. BINNING: That is right.

26 MR. POLLOCK: It perhaps may
27 be an anomaly.

28 MR. BINNING: You can perhaps
29 have one. It is very rarely you have an
30 illegal strike without a contract. You can

1 have it during the period of negotiation when
2 conciliation is still going on, but if there
3 is no union in the picture it is very unusual
4 to have an illegal strike. We often have
5 walk-outs, though, during the certification
6 period.

7 MR. POLLOCK: A recognition
8 strike.

9 MR. BINNING: Yes, but they
10 are very rare. There is recognition picketing.

11 MR. POLLOCK: There could be
12 a recognition strike.

13 MR. BINNING: There have been.

14 MR. POLLOCK: You could pull
15 out your members and say, "We are not coming
16 to work until you recognize us as your
17 bargaining agent".

18 MR. BINNING: That is right
19 but recognition picketing is usually not
20 handled the way you are suggesting. You see
21 the Teamsters as an example ---

22 MR. POLLOCK: I am not talking
23 about organizational striking, I am talking
24 about recognition striking. Recognition means
25 that you have got enough people in the unit
26 to recognize.

27 MR. BINNING: I would take
28 exception to that.

29 MR. POLLOCK: Well, assume that.

30 MR. BINNING: Well, if you assume it--

1 MR. POLLOCK: It is different
2 from organization. You are picketing to get
3 people to join your unit and it is different
4 because you are exerting force against those
5 people on the unit as well as the employer.

6 MR. BINNING: Organizational
7 picketing and recognition picketing, I think
8 are used in the same way. I don't think there
9 is any distinction. When people talk about
10 organizational picketing it is not designed
11 to influence the employees. Organizational
12 picketing, as far as I am concerned, is designed
13 and always has been in our case, to force the
14 employer to sign an agreement or a voluntary
15 recognition.

16 MR. POLLOCK: There is certainly
17 a distinction between the two of them and
18 there is a difference between the two of them.

19 MR. BINNING: In their usage.

20 MR. POLLOCK: Yes, they may
21 be used incorrectly, I am not saying that
22 every time someone says recognition, they mean
23 organizational, or one or the other, they
24 may be using the wrong terminology. I don't
25 want to get into a semantical argument.

26 THE COMMISSIONER: When you
27 are talking about organizational, does that
28 refer to the organization of a union between
29 these men before they have obtained any
30 rights?

1 MR. BINNING: I think that would
2 be the proper use of the word but it is used
3 more often than not, with organizational being
4 that a union pickets in order to get
5 voluntary recognition from an employer when
6 they don't represent better than 50 per cent.

7 MR. POLLOCK: Or where they
8 feel, they may, in fact, have more than 50
9 per cent, but that the certification procedure
10 is too long, takes too much time to accomplish
11 that end because once they are certified then
12 the project is over.

13 MR. BINNING: The reason I
14 really disagreed with you was because we had
15 several cases in our office and I am aware
16 of most of them and I have never yet come
17 across picketing that has been designed to
18 organize workers. That does not mean it
19 does not exist but I am saying that I have
20 never come across it and I can't recall a
21 case in the office being involved where picketing
22 was designed to impress employees on the job
23 site. Every case that we have had of that
24 type of picketing, the purpose has been clearly
25 spelled out, usually in the words of the
26 very union representatives that felt that
27 they wanted the employers to sign an agreement
28 so that is why I jumped at it. It can exist,
29 I don't doubt that.

30 THE COMMISSIONER: Take this

1 situation: Suppose that you have a small
2 plant. They are not going to bother forming
3 a union at all but they are not satisfied with
4 their work and they stop working. Now what
5 is the status of that?

6 MR. BINNING: It is a strike
7 under the Act if they act in concert.

8 MR. POLLOCK: It is an illegality.

9 MR. BINNING: It is illegal.

10 THE COMMISSIONER: Suppose
11 they never form a union: Are they entitled
12 then to go and ask for conciliation?

13 MR. BINNING: No, not unless they
14 are recognized. There has to be a union.

15 THE COMMISSIONER: Then it
16 seems to me that you are mixing it up because
17 if they don't form a union and they stop
18 working, yet it is illegal until they go
19 before the conciliation board.

20 MR. BINNING: There doesn't
21 have to be a union involved before there is
22 an illegal strike.

23 THE COMMISSIONER: Then they
24 ought to be able to apply for conciliation.

25 MR. BINNING: But they would
26 have to come within the definition of a trade
27 union before they could apply for conciliation.

28 THE COMMISSIONER: I know,
29 but you can imply from 54 (2) that that itself
30 creates an implied power or the implied right

1 to conciliation.

2 MR. POLLOCK: 13 is the
3 specific power.

4 THE COMMISSIONER: I am not
5 concerned with any demand to get an agreement
6 at all except in relation to wages. That is
7 by virtue of section 13, but there is nothing
8 to prevent a special power being given in such
9 a situation where there is no union and yet
10 the men stop working.

11 MR. BINNING: You would have
12 to give it to them, though. As of right
13 now, that would be illegal under this Act.

14 MR. POLLOCK: It is an
15 anomaly, I think.

16 THE COMMISSIONER: It is. I
17 gather that from an inspection of 54 (2).

18 MR. BINNING: I don't think
19 so, on an inspection of the entire Act.

20 THE COMMISSIONER: It might
21 do but I think I would listen to an argument
22 against it.

23 MR. BINNING: I would like
24 to make it sometime.

25 MR. POLLOCK: Page 10 of the
26 brief - you suggest ---

27 MR. BINNING: That is a
28 letter, not a brief.

29 MR. POLLOCK: All right,
30 my reference to a brief will be construed as

1 a letter. Trade union responsibility shall
2 be the responsibility of every member. What
3 is the basis for the responsibility?

4 MR. BINNING: If there is an
5 illegal strike on a job site, the union should
6 be held responsible for it.

7 MR. POLLOCK: Absolutely, even
8 though they said, "Don't go back to work and
9 please don't go on strike and follow the
10 procedures"?

11 MR. BINNING: Absolutely. In
12 most collective agreements they are responsible
13 although they don't know it.

14 THE COMMISSIONER: What do
15 you mean they don't know it?

16 MR. BINNING: They don't know
17 it because the union says, "The union agrees
18 that during the currency of the agreement
19 there shall be no strike". There are no
20 ifs, ands and buts about that.

21 THE COMMISSIONER: That refers
22 to union action, surely.

23 MR. BINNING: No, I would
24 argue the other on that.

25 MR. POLLOCK: You wouldn't win.

26 MR. BINNING: I think I would.

27 MR. POLLOCK: What about the
28 principles in all these other cases, Polymer
29 and so forth?

30 THE COMMISSIONER: Yes, you

1 have to take another level of the judiciary.

2 MR. BINNING: I am speaking
3 now of the construction industry and we are
4 basing that comment on this absolute control
5 that they have over their employees. I am
6 not suggesting this generally.

7 MR. POLLOCK: I read into that,
8 maybe I ought not to, that they ought to be
9 suable entities and made liable for all these
10 things.

11 MR. BINNING: No, I am not
12 asking that they be made suable entities.

13 MR. POLLOCK: It is just a
14 question of moral responsibility, is it?

15 MR. BINNING: I say they should
16 be made responsible under the Act. We are
17 running a situation now where we can have a
18 strike and we can't do anything about proving
19 that because no one will say anything.

20 MR. POLLOCK: That is the
21 problem they used to have in malpractice cases
22 against doctors. The conspiracy of silence.

23 THE COMMISSIONER: What was
24 your problem in this particular instance?
25 Proving what?

26 MR. BINNING: Proving that the
27 union called a strike.

28 THE COMMISSIONER: You feel
29 you have to implicate the union?

30 MR. BINNING: I would suggest to

1 you it would be very easy for unions to get
2 away with picketing and we could never get
3 an injunction if they brought someone in from
4 North Bay, gave them picket signs and they
5 could never be identified.

6 MR. POLLOCK: They accomplished
7 that in British Columbia, mystery pickets.

8 MR. BINNING: They haven't
9 done it here.

10 MR. POLLOCK: They haven't
11 tried to use mystery pickets. There is no
12 advantage here because the union is not suitable
13 here.

14 MR. BINNING: But we can never
15 even get an injunction. They are unnamed
16 parties.

17 MR. POLLOCK: They did that
18 in Lynnford Electric, I don't agree with the
19 policy in British Columbia, but you could find
20 out who he was or, as a matter of fact, it has
21 been suggested, "You can go out and picket and
22 let somebody get an injunction against you
23 enjoining not only you, but everybody in the
24 world" and that is what, in fact, happens. That
25 is the effect of the order. I don't suggest
26 that somebody goes out and does that but that
27 is the effect of the order, it governs
28 everybody as long as it names one person.

29 MR. BINNING: I think anyone
30 ought to be disbarred from putting that type

1 of case before the courts.

2 MR. POLLOCK: I am not suggesting
3 that should be the technique but I am saying,
4 as long as you can name one individual that
5 is all you would have to do.

6 MR. BINNING: But I am saying
7 they could circumvent it under the present law
8 in Ontario but they haven't chosen to follow
9 that course.

10 THE COMMISSIONER: Would they
11 have any recourse or reimbursement? Take
12 in the case of money loss from the members
13 of the union who were responsible. Take a
14 suable case where a union is liable. Would
15 you make them liable also for the acts of the
16 individual?

17 MR. BINNING: Yes, in this
18 industry.

19 THE COMMISSIONER: Then it must
20 be on the basis, I would say, that so far
21 as they might reimburse themselves from a
22 general assessment they should be entitled
23 to do so.

24 MR. BINNING: Certainly. I
25 think they have that right now under the
26 constitution. They are not restricted as
27 to the assessments they make against their
28 members.

29 THE COMMISSIONER: That may
30 be under their own constitution.

1 MR. BINNING: They can do that
2 but we are asking in this industry that they
3 be held to be absolutely responsible for the
4 actions of the members because of the control
5 that they exercise. That is the meaning of
6 that.

7 THE COMMISSIONER: And the
8 difficulty of proof of their connection, really.

9 MR. BINNING: Right.

10 MR. POLLOCK: You might accomplish
11 that, I suppose by reverse onus and providing
12 they can establish they weren't responsible.

13 MR. BINNING: Right.

14 MR. POLLOCK: At page 22 you
15 suggest, as others have, that one of the
16 penalties for illegal action ought to be
17 decertification of the union. I want to know
18 whether you think that type is really a
19 penalty against the union or a penalty against
20 the employees.

21 MR. BINNING: In the construction
22 industry it would probably be a penalty against
23 the employer because it is the only union he
24 could use on any job site. They are just
25 general recommendations. I think certainly
26 it would hurt many; in many unions it would
27 be a wonderful thing to exercise in an industrial
28 union. I think it has been used, has it not,
29 in Quebec?

30 MR. POLLOCK: Well, they

1 suggested in Saskatchewan that if they didn't
2 comply with one of the orders that one of the
3 penalties would be decertification and it
4 raised a lot of hue and cry.

5 MR. BINNING: Or that also
6 they wouldn't consider any further applications
7 from that union for a period of time. That
8 could be effective in the construction industry
9 as well.

10 THE COMMISSIONER: What is the
11 effect of decertification?

12 MR. BINNING: Well, the
13 effect of decertification would be, I guess,
14 in one sense, to deprive the employees of
15 the representation of that union.

16 THE COMMISSIONER: But would
17 it go beyond that? The union would remain
18 in existence?

19 MR. BINNING: The union would
20 cease to be the bargaining agent for that
21 group of employees.

22 THE COMMISSIONER: I know, but
23 they might say, "All right, we are outside
24 of the certification but we don't have to
25 be certified in order to have an agreement with
26 an employer".

27 MR. BINNING: The employer
28 would then have to voluntarily recognize
29 that union.

30 THE COMMISSIONER: He has already

1 done that under the certification.

2 MR. BINNING: Let us say
3 an employer refused to do it. As soon as
4 he would refuse to recognize it, any provisions
5 under the collective agreement would be
6 invalid.

7 THE COMMISSIONER: You can
8 form a union that is not certified and 54
9 is to prevent ---

10 MR. BINNING: You could form a
11 new union.

12 THE COMMISSIONER: What is
13 there in the Act that says a decertified
14 union can never again, in any way, avail
15 itself of any of the privileges of the Act?

16 MR. BINNING: Nothing. In fact
17 I think those, in part, are some of the
18 recommendations that have been made. There
19 is nothing in the Act now on this.

20 MR. POLLOCK: But as far
21 as being in a strength position is concerned,
22 they can never get into a strike position
23 because under 13 a Minister can't appoint a
24 conciliation until there has been notice
25 under 11 or 40.

26 MR. PINNING: Decertification
27 now can only be made under application under
28 section 46.

29 MR. POLLOCK: You can never
30 strike on a voluntary recognition for a first

1 agreement.

2 MR. BINNING: There is now
3 provision in the Act for voluntary recognition
4 and you can apply for conciliation.

5 MR. POLLOCK: What section?

6 MR. BINNING: If voluntary
7 is in writing. The collective agreement
8 that was in writing and lived up to by both
9 parties, instead of being a collective
10 agreement they ruled it had to be signed.

11 MR. POLLOCK: That is 13 (3).

12 THE COMMISSIONER: It is
13 specifically permitted. Therefore, this
14 unit that has been decertified can come in
15 under that.

16 MR. BINNING: I am not
17 arguing that.

18 MR. POLLOCK: They would have
19 to be voluntarily recognized.

20 MR. BINNING: The employer
21 would have to voluntarily recognize them
22 but the employer is likely the one who is
23 going to apply for decertification, so I doubt
24 if he would voluntarily recognize them.

25 THE COMMISSIONER: If he won't
26 recognize them and they are decertified, is
27 that group of men deprived of striking?

28 MR. BINNING: Yes, they
29 have to join another union or form their
30 own.

1

MR. POLLOCK: And get recognized
or certified.

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MR. BINNING: That is not a
serious recommendation.

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MR. POLLOCK: It is hard to weed
the serious ones out from the non-serious ones.

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MR. BINNING: It is hard
to realize what sort of power you can give the
Board. That seems to be one they could
exercise without changing broad principles.

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MR. POLLOCK: The next question
is related to pages 24 and 25 in which you
deal with grievance picketing and recognition
picketing. They probably can be summed up
in the one comment that the unions make when
they say that the time factors in construction
just do not permit the ordinary operation
of the certification procedure and the grievance
procedure. What have you to say to that?

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MR. BINNING: First of all
on recognition, right now the Board certifies
under the construction industry within two
weeks. Now, two weeks to me is not a long
time for certification.

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MR. POLLOCK: From the start
of the application?

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MR. BINNING: From the start
of the application to the issue of the
certificate it is not less than two weeks.
They even certify without a hearing under the

1 construction section, more often than not. So
2 that is, I think, the answer to that one.

3 On a grievance picketing, as
4 you will note - I guess you have been supplied
5 with that Kidd Creek Mine - the disputes they
6 have are not continuing disputes: More often
7 than not they are just minor items. They can
8 well be solved months later.

9 MR. POLLOCK: If the operation
10 is still going on.

11 MR. BINNING: Even afterwards.
12 If it involves money they can still be awarded
13 damages but in most cases their grievances
14 can properly be handled under the grievance
15 procedure.

16 MR. POLLOCK: What if it
17 involves assignment of overtime or interpretation
18 of the contract as to what - not a jurisdictional
19 question but perhaps a ---

20 MR. BINNING: Assignment of
21 overtime is solved by damages too, so that you
22 don't worry about that one.

23 MR. POLLOCK: How do you ---

24 MR. BINNING: If you have
25 assigned overtime, contrary to the provisions
26 of the agreement, then you must distribute the
27 amount of that overtime in terms of wages
28 to the employees who were deprived of overtime
29 that they should have received under the
30 agreement.

1 MR. POLLOCK: But how do you
2 determine who were the employees that were
3 entitled to it? If you have a job that
4 entitles overtime to two employees and you
5 have got ten who were possibly entitled to it
6 and you select two out of those and it was
7 the wrong two, what about the other eight?

8 MR. BINNINGS: The ones who
9 say under the agreement they were properly
10 entitled to it can then claim damages for
11 the overtime they lost.

12 MR. POLLOCK: What about
13 other interpretation problems in the construction
14 field?

15 MR. BINNING: You name them
16 and I will tell you what is wrong with them.
17 You are talking in a vacuum. Most of these
18 are properly solved by damages and damages
19 have been awarded against companies in
20 regard to them.

21 MR. POLLOCK: Even though they
22 are no longer employees of the company?

23 MR. BINNING: That is correct.

24 THE COMMISSIONER: Well, it is
25 just a past contract.

26 MR. BINNING: That is right,
27 and the proper remedy is damages.

28 MR. POLLOCK: And you say
29 that you don't have any problem with the
30 multi-unit or multi-situs picketing as long as

1 you don't try to operate the particular area
2 that is on strike.

3 MR. BINNING: That has been
4 the pattern.

5 MR. POLLOCK: Now, there have
6 been considerable cases in which there have
7 been injunctions obtained in those circumstances
8 so that I can only assume from that that the
9 contractor was trying to operate in those
10 conditions.

11 MR. BINNING: There have
12 only been four injunctions, as I read the
13 injunction, in our experience in the construction
14 industry. There have only been four injunctions
15 out of 141, involving picketing during a
16 legal strike.

17 MR. POLLOCK: That is in the
18 Supreme Court of Ontario, not counting any
19 ex parte applications that may be made to
20 the County Court.

21 MR. BINNING: Right, when you
22 are talking Toronto, you are talking about
23 the Supreme Court.

24 MR. POLLOCK: Right. Are you
25 limiting that comment to only Toronto?

26 MR. BINNING: No, those writs
27 were in here.

28 MR. POLLOCK: But your comment
29 as far as Toronto is concerned, that there is
30 no problem with picketing, that is only in

1 Toronto?

2 MR. BINNING: Yes, that is
3 our experience, I am speaking of our experience.
4 I don't know the rest of the province, to
5 be honest with you. That would be hearsay.

6 MR. POLLOCK: Let me have
7 your opinion on the basis of how you can
8 accommodate the rights of the union on strike
9 picketing the site and the rights or freedoms
10 or liberties of those other contractors who
11 have contracted with their employees to
12 work on that site and they won't cross this
13 picket line.

14 MR. BINNING: Well, it is
15 clear that in some cases some employers have
16 agreed to provisions in their collective
17 agreement saying their employees will not
18 be compelled to cross illegally established
19 picket lines. Now we would not agree to
20 that provision.

21 MR. POLLOCK: Well, that only
22 affects a remedy that that contractor would
23 have against his employee.

24 MR. BINNING: Right. Now I
25 don't - I feel that if a group of employees
26 enter into a collective agreement for a period
27 of four years, then they have contracted away
28 their right to refuse to work except for
29 the reasons as set out in that agreement and
30 except for the individual right to quit, I am

1 not challenging that. So I would say to you
2 that they have no right at all to refuse
3 to cross a picket line unless they have that
4 provision in their collective agreement.

5 MR. POLLOCK: All right, now
6 what happens if they do refuse to cross that
7 picket line?

8 MR. BINNING: If they do
9 refuse the only procedure left open to us is
10 a declaration of an illegal strike which the
11 Board would issue under those facts, consent
12 to prosecute and prosecution, if we wanted
13 to do it.

14 MR. POLLOCK: It is a remedy
15 aimed at these employees.

16 MR. BINNING: Right.

17 MR. POLLOCK: It is not the
18 technique that is sometimes used that they
19 get an injunction against the people who are
20 lawfully picketing by saying that they are
21 inducing a breach of contract by the other
22 employees.

23 MR. BINNING: Certainly, as
24 far as our office is concerned, we would
25 not recommend an injunction under the terms
26 you have just stated.

27 MR. POLLOCK: You think that
28 would be improper?

29 MR. BINNING: I think it would
30 be to take away the right to picket under

1 those circumstances, provided it is kept
2 within limits. For example, there have been
3 situations where you have a large site
4 where the union that is on strike is only
5 working on, say, this entrance, of that
6 particular building and then you have another
7 building, maybe further over on the same
8 site and they see fit to picket over at that
9 one too, to interfere with those operations.
10 I think that is wrong but certainly where
11 they were carrying on their operations, I
12 would say that that picketing was valid and
13 should not be stopped providing it was
14 peaceful.

15 MR. POLLOCK: And so far as
16 those employers who contract to permit them
17 not to cross the picket line, they have
18 contemplated the situation and they have
19 no remedy, they ought to have no remedy.

20 MR. BINNING: That is right.

21 MR. POLLOCK: Thank you.

22 Well, we are indeed obliged
23 to both of you gentlemen. I don't know if
24 you want to add anything, Mr. Becigneul?

25 MR. BECIGNEUL: I would just
26 like to thank Commissioner Rand and yourself
27 for giving us this opportunity today, on behalf
28 of the Toronto Construction Association.

29 THE COMMISSIONER: We are
30 largely the beneficiaries.

1 MR. BECIGNEUL: Thank you, sir.

2 MR. BINNING: Thank you, sir.

3 MR. POLLOCK: The Commission
4 is adjourned until 10:00 o'clock tomorrow
5 morning.

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7 ---Adjournment.
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